Due Service and receipt of the within copy of the Statement of Appellants Respecting Jurisdiction of Court to Review Judgment Involved Herein is hereby admitted this ..... day of October, 1930.

.....,

.....,

.....,

Attorneys for Appellees Railroad Commission of the State of California, and Leon O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thos. S. Louttit, W. J. Carr, as Members of and Constituting the Railroad Commission.

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CHARLES ELMORE

In the Supreme Court

OF THE

United States

Oct. Term, 1930.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,
Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,
Appellees.

No. 470

LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation,
Appellant,

vs.

SAME.
Appellees.

No. 471

SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
Appellants,

vs.

SAME.
Appellees.

No. 472

JOINT BRIEF FOR APPELLANTS.

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In the Supreme Court
OF THE
United States
Oct. Term, 1930.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation, *Appellant,* vs. RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission, *Appellees.*	No. 470
LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation, *Appellant,* vs. SAME. *Appellees.*	No. 471
SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation, *Appellants,* vs. SAME. *Appellees.*	No. 472

JOINT BRIEF FOR APPELLANTS.

Appellants will be referred to as the "Railroads" and appellees will be referred to as the "State Commission".

OPINIONS.

The opinion of the Supreme Court of the State of California is reported in *A. T. & S. F. Ry. Co., et al. v. California Railroad Commission, et al.,* 209 Cal. 460, hereinafter referred to as *Second State Court Case,* and included in the Record at pages 184-199.

The opinion and order of the State Commission, directly involved herein, are reported in *Municipal League, et al. v. Southern Pacific Co., et al.,* 30 Opinions of the R. R. Com. of Cal. 151, hereinafter referred to as the *Third State Commission Decision,* and will be found at pages 119-134 of the Record.

Other Opinions Rendered by Commissions and Courts Relating to This Controversy.

The first opinion and order of the State Commission are reported in *Municipal League, et al. v. Southern Pacific Company, et al.,* 19 Opinions of the R. R. Com. of Cal. 740, hereinafter referred to as the *First State Commission Decision* (R. pp. 24-84).

The opinion and order of the State Commission on rehearing are reported in *Municipal League, et al. v. Southern Pacific Co., et al.,* 20 Opinions of the R. R. Com. of Cal. 937, hereinafter referred to as the *Second State Commission Decision* (R. pp. 84-96).

An opinion of the Interstate Commerce Commission is reported in *Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, hereinafter referred to as

First Federal Commission Decision; an opinion of the Interstate Commerce Commission is reported in *Los Angeles Passenger Terminal Cases,* 142 I. C. C. 489, hereinafter referred to as *Second Federal Commission Decision* (R. pp. 135-156).

An opinion of the Supreme Court of California is reported in *A. T. & S. F. Ry. Co., et al. v. Railroad Commission,* 190 Cal. 214, hereinafter referred to as the *First State Court Case.*

An opinion of this Court is reported in *Railroad Commission of California v. Southern Pacific Company, et al.,* 264 U. S. 331, hereinafter referred to as *First Los Angeles Case;* an opinion of this Court is reported in *Interstate Commerce Commission v. United States, ex rel Los Angeles,* 280 U. S. 52, hereinafter referred to as *Second Los Angeles Case.*

JURISDICTION.

The Railroads, pursuant to Rule 12, Paragraph 1, of this Court, have filed their statement as to jurisdiction and this Court has found December 1, 1930, that probable jurisdiction has been shown (*A. T. & S. F. Ry. Co., et al. v. Railroad Commission, et al.,* U. S. Sup. Ct. Advance Opinions, 75 L. ed. 118).

Statement of the Case.

These appeals are from judgments rendered by the Supreme Court of the State of California in three consolidated cases wherein the State Court affirmed an order of the State Commission which the State Court stated requires the Railroads "to construct a union passenger station" at a new site within a defined area in the City of Los Angeles "together with such tracks, connections and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of the Railroads as may be reasonably necessary and incidental to the use of said union passenger station at a cost * * * of approximately Ten Million Dollars and in substantial compliance with the plans outlined by the Commission".

At the commencement of the proceedings which culminated in the order under review, the Railroads had separate passenger stations in the City of Los Angeles, none of which is in the vicinity of the others, two of the stations being located west of the Los Angeles River, and the other station east of the River. The location of these stations and of the tracks by which the Railroads reach their respective stations is graphically shown on Exhibit 5 incorporated in the record between pages 226 and 227.

The passenger facilities of the Railroads at Los Angeles are substantially as they were on April 7, 1924, the date upon which this Court rendered its

decision in the *First Los Angeles Case, supra,* except as hereinafter noted. The concise and complete statement made by the Court at page 338 of its opinion correctly reflects the situation which obtains today and it is quoted for the convenience of the Court:

> "Lines of the three railways approach Los Angeles from the north and come together in the city near the North Broadway viaduct as it crosses the Los Angeles River. Thence the Salt Lake and Santa Fe lines follow the bed of the Los Angeles River, one on its east and the other on its west bank. The Salt Lake passenger station is at 1st Street. Its main line from Pasadena and Glendale comes from the north, but its line from Salt Lake comes in from the south. From north to south in Los Angeles, its line hugs the east bank of the river for three miles. The Santa Fe Station is opposite that of the Salt Lake Railway on the west bank. The Santa Fe hugs the west bank for three miles in the city. One of its lines leaves Los Angeles by the north for Chicago. Another leaves the city by the south through Riverside for Chicago. The Southern Pacific does not follow the river bed after passing under the Broadway viaduct but extends in a southwesterly direction until it reaches the north end of Alameda Street. From that point it runs south through the city at grade on that street. Its station is at 5th Street and lies southwesterly from the Salt Lake and Santa Fe stations and a quarter of a mile distant from them. The eastern main line of the Southern Pacific crosses the river at Alhambra Avenue, joins the San Fran-

> cisco main line and reaches the station from there by the same tracks on Alameda Street. The Southern Pacific occupies Alameda Street on grade and longitudinally in both directions from its station for three miles. Its lines toward the South go to San Pedro and Santa Anna."

Attention should, however, be directed to the fact that the Los Angeles & Salt Lake Station having been destroyed by fire, that company at the present time occupies the Southern Pacific station jointly with that company and operates its trains into and out of the Southern Pacific station by using a portion of the Southern Pacific Company's main lines and passenger terminal facilities by agreement under temporary permits issued by the Commission (R. p. 260).

Proceedings were instituted before the Railroad Commission of the State of California in 1916 by several civic organizations praying for the elimination of certain grade crossings within the City of Los Angeles by the concentration and the joint use of the tracks of the Railroads and for a rearrangement of passenger stations and freight stations (R. pp. 9-12). Following protracted hearings the State Commission rendered its decision and order requiring the Railroads to eliminate specified grade crossings and to construct a union passenger station at a new site within a defined area *(First State Commission Decision, supra)* (R. p. 24).

Upon application of the Railroads a rehearing was granted and a second decision and amended order was made by the State Commission again requiring the Railroads to construct a union station and eliminate specified grade crossings *(Second State Commission Decision, supra)* (R. p. 84).

Petitions for writs of certiorari were filed by the Railroads in the Supreme Court of the State of California and the State Court annulled the Commission's said decisions and orders upon the ground that the orders were beyond the power of the State Commission because the subject matter had been committed to the Interstate Commerce Commission by the Transportation Act of 1920, the Court holding that if the State Commission's order had required only the elimination of grade crossings it would have been affirmed, but because it was based upon the establishment of a union station it was invalid *(First State Court Case, supra)*.

This Court granted writs of certiorari upon application of the State Commission and thereafter rendered its decision affirming the judgment of the State Court *(First Los Angeles Case, supra)*.

Subsequent to the time the State Commission's first two decisions were rendered and prior to the time this Court decided the case last cited, the City of Los Angeles instituted proceedings before the Interstate Commerce Commission praying for an order requiring the Railroads to construct and operate a union stat-

tion, to abandon main line passenger and freight service except local switching on Alameda Street, eliminate grade crossings, construct and acquire new facilities, and join in the operation of their several terminal facilities.

The Interstate Commerce Commission thereafter rendered its decision in the *First Federal Commission Decision, supra,* holding that it was not empowered to require the Railroads to construct a union passenger station and made what this Court characterized in the *Second Los Angeles Case, supra* (p. 62) as "hypothetical certificates". These certificates are summarized by this Court in that case as follows (p. 62):

> "(1) That the public convenience and necessity require the extensions of lines that may be necessary to reach and serve any union passenger station within the plaza which may be constructed in accordance with a lawful order of the State Commission and that may be necessary to provide for the incidental rearrangement of passenger and freight routes, and that the expense involved will not impair the carriers' ability to perform their duties to the public. (2) That public convenience and necessity permit the abandonment of train service on Alameda Street and such other abandonments of lines as would be necessary in connection with the establishment of any such station, so lawfully ordered by the State Commission. The report further found that such joint use of track or other terminal facilities as may be incidental and necessary to the proper opera-

> tion of any such union station is in the public interest and is practicable, without substantially impairing the owning carriers' ability to handle their own business. As to the application by the Southern Pacific and Salt Lake to extend their lines to permit the joint use of the Southern Pacific's existing station, the Commission's findings were unfavorable and its order denied the application. The Commission's then report was not accompanied by certificates carrying out its findings, and it reserved jurisdiction to alter its findings in the event that the plan of the State Commission, as finally evolved, should be materially different from that 'as here considered to be in the public interest.'"

Subsequent to the decision by the Federal Commission proceedings before the State Commission were reopened over the objections of the Railroads (R. pp. 111-118) and after further hearings, the State Commission rendered its third decision and order under review herein *(Third State Commission Decision, supra)*.

Referring to this order, the State Court said in the *Second State Court Case, supra* (R. p. 186):

> "A similar order was made by the Railroad Commission in 1921, and a writ of certiorari to review this action of the Commission was obtained from this court, and in December, 1922, this court filed its decision annulling such order. *A. T. & S. F. Ry. Co. v. Railroad Commission,* 190 Cal. 214."

The requirements of this "similar order" were summarized by this Court in the *First Los Angeles Case, supra,* as follows (p. 339):

> "The order of the Railroad Commission requires the abandonment of the passenger stations of the three railways. The Southern Pacific Station is a comparatively modern depot and would be adequate for many years. Those of the other two companies are not adequate, but they have ample ground upon which to construct suitable stations. The order required the removal from Alameda Street of the main line of the Southern Pacific for three miles, permitting the use of its tracks in that street for switching during a few hours at night. The order also required that by viaducts over the river and over the Salt Lake & Santa Fe tracks on the river banks, grade crossings should be eliminated. The order further required that the three railways should purchase jointly land enough in an area reaching from Alameda Street to the river and from Aliso Street to Alhambra Street to erect a suitable Union Station, to be situated somewhere near a square called the Plaza. The railways are directed to make such additions to, extensions of, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said Union Passenger Station. This would require the removal of the present station of the Southern Pacific from 5th Street toward the Plaza, at least half a mile, and the stations of the Santa Fe and the Salt Lake from 1st Street on the river to the Plaza more than a quarter of a mile. The

changes to be effected under the order will require, in the abandonment of the Southern Pacific main track on Alameda Street for three miles, a joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, or the construction of its own main tracks on one side or the other along the river bank. The main tracks of the Salt Lake must be extended across the Los Angeles River on a viaduct to the area selected for the Union Station. The main track of the Santa Fe runs along the river side of the selected area but an extension of its main tracks will have to be made to bring it into the new station.

The order requires the joint use of land, tracks and terminal facilities valued at $28,050,691; the abandonment of three existing passenger stations of the railways as such, and the ultimate capital expenditure for all recommendations of from $25,000,000 to $45,000,000."

With the exception of the reduced estimated cost and the requirement of the elimination of grade crossings over the Salt Lake and Santa Fe tracks on the river banks, over which viaducts have since been constructed, the State Commission's order under review is practically identical with its original orders.

This latest order requires the Railroads to construct a union passenger station in compliance with the plans outlined in the State Commission's Exhibit 4-b (R. p. 267), which it found to be in all essential respects similar to the plan considered by the State Commission

in its original decision and report; to extend their lines of railroad to reach the union station; to construct such tracks, connections and other terminal facilities and additions and improvements to existing facilities convenient or incidental to the use of said union passenger station; to permit the joint use by all of the Railroads of one or more of the Railroads' tracks and terminals; and to abandon existing stations, other facilities and certain main lines of railroad and the operation thereof. (R. pp. 131-134).

This order also involves the acquisition of new land, about forty acres, a portion of which is owned by some of the Railroads and its dedication to public use, it not now being dedicated to any public use; the acquisition of new railroad rights of way; and the obtaining of new franchises.

The State Commission's order was conditioned to become effective from and after the promulgation by the Interstate Commerce Commission of sufficient certificates or other appropriate order or orders authorizing the construction, extensions and abandonments ordered by the State Commission (R. p. 134).

The State Commission's order further required the Commission's attorney to apply to the Interstate Commerce Commission to issue such certificates or orders (R. p. 134).

The State Commission reserved the right to make such further orders or modifications thereof, "as may be determined by the Commission to be just and rea-

sonable and as public safety, convenience and necessity may require" (R. p. 134).

Petitions were filed with the Interstate Commerce Commission by the State Commission praying that certificates issue in accordance with the findings made by the Interstate Commerce Commission in the *First Federal Commission Decision, supra,* and by the City of Los Angeles asking that an order be entered requiring the Railroads to construct and thereafter operate a union passenger station and appurtenances in substantial compliance with the State Commission's Exhibit 4-b (R. p. 142).

The Interstate Commerce Commission then made its second decision and order denying the petition of the State Commission and City of Los Angeles to require the Railroads to construct a union station upon the ground that it had not been authorized to make such an order but undertook to issue certificates reciting that the present and future public convenience and necessity require the construction by the Railroads of extensions of their respective main lines of railroad, abandonment of such portions of their main lines as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of a union passenger station and permit of the abandonment and operation of passenger and freight train service by Southern Pacific Company on Alameda Street and require the use by the Railroads of so much of the

terminal main line track or tracks of any of the other Railroads as may be incidental and necessary or convenient to the operation of a union passenger station (*Second Federal Commission Decision, supra,* R. pp. 135, 153).

The City of Los Angeles petitioned the Supreme Court of the District of Columbia for a writ of mandamus to compel the Interstate Commerce Commission to require the Railroads to construct and operate an interstate union passenger station in the City of Los Angeles. This petition was dismissed by the Supreme Court of the District, reversed by the Circuit Court of Appeals, which Court was in turn reversed by this Court in the *Second Los Angeles Case, supra.*

Thereafter the State Court entered its judgment affirming the order under review and decided that Congress has not "entered the field of regulation respecting the establishment of union stations to such an extent as to automatically terminate the state's power to deal with that subject * * * that Congress has merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations * * *"; "that the Railroad Commission of California has not been divested of jurisdiction to make the order" * * * and "that this power never having been divested is vested at present in the State Railroad Commission * * *"; that the State Commission is vested

with power to require the Railroads to construct "such tracks, connections, and all of the terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of applicants as may be reasonably necessary and incidental to the use of said union passenger station" *(Second State Court Case, supra,* R. pp. 184 *et seq.*).

The State Court further held that the State Commission's order did not violate the constitutional rights of the Railroads in requiring them to abandon adequate facilities, including their passenger terminals and portions of their main lines of railroad; to acquire and dedicate to public use new property necessary for the construction of a union station; to extend their main lines of railroad to reach new territory not heretofore served by them and to permit other Railroads to use their main line tracks and passenger terminal facilities without adequate or any compensation (R. p. 195).

The State Court denied the Railroads' petitions for rehearing June 26, 1930, and the Railroads thereupon brought the cases to this Court by direct appeal (R. p. 199).

CONSOLIDATION OF CASES.

The several proceedings before the State Commission were consolidated, and although the Railroads filed separate petitions for writs of review in the State

Court the cases were again consolidated, and but one record has been filed in this Court and the Railroads join in this brief although their interests are several and in some respects are not reciprocal and mutual.

QUESTIONS PRESENTED.

There are four principal questions presented for decision:

1. Whether the order of the State Commission requiring the Railroads to construct a union station at a new site; to extend and abandon their main lines of railroad; to permit one another to jointly use their main lines of railroad, tracks and other facilities; to connect their respective railroads with one another; to join in constructing main line tracks for their joint use; and to consolidate their terminal facilities, is a regulation of interstate commerce in conflict with the powers which have been vested in the Interstate Commerce Commission by the Act to Regulate Commerce and particularly by paragraphs (18) - (21) of Section 1, and paragraphs (3) - (4) of Section 3 thereof and therefore an unlawful invasion of the field occupied by Congress thereby violating provisions of Section 8 of Article 1 of the Constitution of the United States;

2. Whether the certificates issued by the Interstate Commerce Commission in adversary proceedings purporting to authorize the Railroads to extend and abandon their main lines of railroad are beyond the power which has been vested in that Commission and are therefore void;

3. Whether the order of the State Commission requiring the Railroads to extend their main lines of railroad to reach new territory; to permit the joint use by one or more railroads of facilities owned by the others; to join in constructing tracks, connections and other terminal facilities; to install large and expensive additions and betterments; to abandon main lines of railroad; to abandon the use of adequate passenger facilities at their sole cost and expense without provision for making adequate or any compensation therefor, is beyond the power which it can constitutionally exercise and deprives the Railroads of their property without due process of law, and denies them the equal protection of the law in contravention of the provision of the Fourteenth Amendment to the Constitution of the United States;

4. Whether the order of the Commission is beyond the power which it can constitutionally exercise and deprives the Railroads of their property without due process of law in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States because:

(a) It requires one of the Railroads, Southern Pacific Company, to abandon its adequate passenger station and passenger facilities and join the other two Railroads, Santa Fe and Los Angeles & Salt Lake Companies, in acquiring new property upon which to construct a new union station, to construct such station and to extend its main lines

for the purpose of eliminating grade crossings and providing these railroads with adequate passenger terminal depots;

(b) It requires the Santa Fe and Los Angeles & Salt Lake Companies to abandon adequate passenger station facilities and join Southern Pacific Company in acquiring new property upon which to construct a new union station, to construct such station, and to extend their main lines for the purpose of eliminating grade crossings of Southern Pacific Company with which they have no concern.

STATUTES INVOLVED.

Pertinent provisions of the Federal Statutes, 41 U. S. Stat. at Large, C. 91, pp. 476-478, Sec. 402, 49 U. S. C. A., Sec. 1, pars. (18) to (22), pars. (18) to (22) of Sec. 1 of Interstate Commerce Act, and 41 U. S. Stat. at Large, C. 91, pp. 479-480, Sec. 405, 49 U. S. C. A., Sec. 3, pars. (3) and (4), pars. (3) and (4) of Sec. 3 of Interstate Commerce Act, are printed in the Appendix hereto.

Likewise pertinent provisions of the Constitution of California, Const. of Cal., Art. XII, Secs. 22 and 23, and of the Public Utilities Act of the State of California, Statutes of California 1915, C. 91, p. 115, Secs. 13(b), 22(a), 30, 31, 36, 41, and 67, are printed in the Appendix hereto.

Specification of Errors.

A specification of such of the assigned errors as the Railroads urge is that the State Court erred:

I.

In holding that the order of the State Commission commanding the Railroads, and each of them, to extend their main lines of railroad, abandon main lines of railroad and the operation thereof and existing station facilities, permit joint use of their main line tracks by each other, connect their main line tracks with those of each other, join in constructing main line tracks for their joint use, join in constructing other terminal facilities, additions, extensions, improvements in their existing railroad facilities, join in establishing, maintaining and operating a union passenger station at a new site, and interchange traffic between their lines of railroad, is not beyond the power of the State Commission, is not in conflict with the powers conferred by Congress upon the Interstate Commerce Commission by the provisions of paragraphs (18) - (21) of Section 1, and paragraphs (3) and (4) of Section 3, of the Interstate Commerce Act, and is not such a regulation of interstate commerce as conflicts with the power of Congress to regulate such commerce under Section 8 of Article I of the Constitution of the United States (Assignment of Errors, 6, 7, 8, 9, 10, 12; 13, R. pp. 207-210).

II.

In holding that the certificates issued by the Interstate Commerce Commission in adversary proceedings and not upon the motion or application but over the protest and objection of the Railroads are proper and sufficient; that the State Commission is vested with power and authority to order the Railroads to construct main line tracks, main line track connections and other railroad facilities, make joint use of such tracks and abandon existing stations, station facilities and main line tracks, as may be reasonable, necessary and incidental to the use of a union station at the City of Los Angeles in accordance with said certificates, and to enforce compliance with said certificates, is not an attempt by the State Commission to order the Railroads to do that which can be permitted by the Interstate Commerce Commission only upon applications made by the Railroads (Assignment of Errors, 14, 15, 16, 17, R. pp. 210-211).

III.

In holding that the order of the Railroad Commission of the State of California requiring the Railroads, and each of them, to construct such tracks, connections, and other terminal facilities, additions, extensions of lines, improvements and changes in the existing railroad facilities of the Railroads, as are necessary or incidental to the use of the union passenger station to be located in territory not hereto-

fore served by the Railroads, permit one another to make use of their main line tracks, join with each other in constructing tracks for their joint use, make connections between their main line tracks, abandon the use of their existing passenger stations, station grounds, and portions of their main lines, join each other in constructing, maintaining and operating a union passenger station at a new site, acquire and dedicate to public use the new property necessary for the construction of said union station, procure large sums of new capital to comply with said order, does not deprive the Railroads of their property without due process of law and deny the Railroads the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States (Assignment of Errors, 1, 2, 3, 4, 5, R. pp. 205-207).

IV.

(a) In holding that the order of the State Commission requiring Southern Pacific Company to abandon its adequate passenger station and facilities and join with The Atchison, Topeka & Santa Fe Railway Company and Los Angeles & Salt Lake Railroad Company in acquiring new property upon which to construct a union passenger station for the purpose of eliminating certain grade crossings in the City of Los Angeles, and for the purpose of providing said other carriers with adequate passenger terminal depots, does not deprive Southern Pacific Company of its property

without due process of law and takes its property for public use without compensation, in contravention of the Fourteenth Amendment to the Constitution of the United States (Assignment of Errors, 20 S. P. Co., R. p. 214).

(b) In holding that the order of the State Commission requiring The Atchison, Topeka & Santa Fe Railway Company and the Los Angeles & Salt Lake Railroad Company to abandon the use of their respective passenger stations and station grounds in the City of Los Angeles and join with Southern Pacific Company in maintaining and operating a union passenger station for the purpose of removing trains of Southern Pacific Company from Alameda Street in said City, with which removal they have no concern, is not a taking of their property without due process of law and denying them the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States (Assignment of Errors, 20 A. T. & S. F. Ry. Co. and 20 L. A. & S. L. R. Co., R. pp. 212-213).

Summary of Argument.

I. The State Commission's order is in contravention of and repugnant to the provisions of Section 8, Article 1, of the Constitution of the United States, and the powers sought to be exercised by the State Commission are inconsistent and in conflict with the powers vested in the Interstate Commerce Commission by the provisions of paragraphs (18-21) of Section 1, and paragraphs (3-4) of Section 3 of the Interstate Commerce Act.

The State Commission, By the Specific Requirements of Its Order, Has Invaded a Field Which Has Been Occupied By Congress.

Congress Has Fully Occupied the Field and the State Has Been Divested of the Power to Order Extensions, Abandonments, Consolidation of Terminals, Joint Use of Terminals and Interchange of Traffic.

When Congress occupies the field relating to interstate commerce a State Statute is superseded even though the Federal Statute does not cover the subject as fully and completely as the State Law.

The order of the State Commission cannot be supported or rendered valid by certificates issued by the Interstate Commerce Commission.

There cannot be a divided authority between the Federal and State Commissions.

Neither the Federal nor the State Commissions have been vested with power to give effect to orders entered by the other.

II. The certificates of the Interstate Commerce Commission are void.

The Certificates Could Not Lawfully Be Issued Under Paragraphs (18), (19) and (20) of Section 1 of the Interstate Commerce Act.

They were issued not on application of the Railroads, but in proceedings adverse to them and over their protest.

Paragraphs (18), (19), (20) of Section 1 do not give the Commission power to issue certificates except on application of carriers.

Paragraph (21) of Section 1 Does Not Give the Commission Authority to Issue the Certificates.

The Question of the Validity of the Certificates Was Decided by the State Court and is Duly Presented Here.

III. The State Commission's order deprives the railroads of their property without due process of law and denies them the equal protection of the laws and takes their property for public use without just compensation, in contravention of the Fourteenth Amendment to the Constitution of the United States.

The Railroads Are Denied Their Constitutional Rights By Failure of the State Commission to Provide Compensation for the Use of Their Railroad Properties By One Another.

The State Commission Cannot Impair the Railroads' Constitutional Rights Under the Guise of Exercising Its Police Power Requiring the Railroads to Eliminate Grade Crossings.

IV. (a) The State Commission's order deprives Southern Pacific Companyof its property without due process of law and takes its property for public use without just compensation because the necessary force and effect thereof is to require it to abandon main line tracks, adequate existing passenger station and station grounds, acquire a new station site, rights of way leading thereto and join in constructing new terminal facilities at a new location and extend its main lines of railroad, for the purpose of providing the Santa Fe and Los Angeles & Salt Lake Companies with adequate passenger depots.

Southern Pacific Company Cannot Be Compelled to Incur the Expense of Providing Adequate Station Facilities for Other Lines.

(b) The State Commission's order deprives The Atchison, Topeka and Santa Fe Railway Company and Los Angeles & Salt Lake Railroad Company of their property without due process of law and deprives them of the equal protection of the laws, because the necessary force and effect thereof is to require these railroads to join with other railroads in the construction of a union station to accomplish the purpose of eliminating grade crossing of Southern Pacific Company on Alameda Street, with which they have no concern.

Argument.

I.

THE STATE COMMISSION'S ORDER IS IN CONTRAVENTION OF AND REPUGNANT TO THE PROVISIONS OF SECTION 8, ARTICLE 1, OF THE CONSTITUTION OF THE UNITED STATES, AND THE POWERS SOUGHT TO BE EXERCISED BY THE STATE COMMISSION ARE INCONSISTENT AND IN CONFLICT WITH THE POWERS VESTED IN THE INTERSTATE COMMERCE COMMISSION BY THE PROVISIONS OF PARAGRAPHS (18-21) OF SECTION 1, AND PARAGRAPHS (3-4) OF SECTION 3 OF THE INTERSTATE COMMERCE ACT.

(Specification of Error I.)

REQUIREMENTS OF STATE COMMISSION'S ORDER.

The requirements of the State Commission's order under review are substantially identical with its two previous orders, which were reviewed by this Court in *First Los Angeles Case, supra,* and the State Court so held in *Second State Court Case, supra* (R. p. 186).

The Commission's order requires:

1. Construction of a union passenger station in a new location.

   Com. Finding No. 7, R. p. 132,
   Com. Order, par. 1, R. p. 133.

2. Joint use of main lines of railroad and terminal facilities owned by the several Railroads,

   Com. Finding No. 6, R. p. 132,
   Com. Order, par. 1, R. p. 133,
   Com. Exhibit No. 6, R. p. 227.

3. Construction of connections between main lines of the Railroads.

Com. Order, par. 1, R. p. 133,
Com. Exhibit 6, R. p. 227,
Com. Exhibit 4-B, R. p. 267.

4. Extension of main lines of steam railroad so as to reach and serve said union passenger station.

Com. Finding No. 3, R. p. 131,
Com. Order, par. 1, R. p. 133.

5. Construction of approximately 8.28 miles of joint station tracks, connections and all other terminal facilities necessary, convenient or incidental to the use of said union passenger station.

Com. Finding No. 7, R. p. 132,
Com. Order, par. 1, R. p. 133,
Com. Exhibit 4-B, R. p. 267.

6. Abandonment of main lines of railroad and the operation of all or any portion of the present train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks and terminal facilities necessary in connection with the construction and establishment of said union passenger station.

Com. Finding No. 5, R. p. 132,
Com. Order, par. 1, R. p. 133,
Com. Exhibit 4-B, R. p. 267.

7. Abandonment and discontinuance of operation by Southern Pacific Company of passenger and freight train service (except industrial freight switching during specified night hours) over approximately 6.6 miles of its main line of railroad.

Com. Finding No. 3, R. pp. 132-4, 137.

THE STATE COMMISSION, BY THE SPECIFIC REQUIREMENTS OF ITS ORDER, HAS INVADED A FIELD WHICH HAS BEEN OCCUPIED BY CONGRESS.

A consideration of the specific requirements of the Commission's order shows wherein the order is inconsistent and in conflict with the powers which have been vested in the Interstate Commerce Commission.

(1) Union Station.

In its first decision the State Court held that full power and authority over the matter of union terminal depot facilities of the Railroads, who are largely engaged in interstate commerce, has been vested in the Interstate Commerce Commission under the terms of the Transportation Act, 1920, and that by virtue thereof the Railroad Commission of California has been divested of the power, authority and jurisdiction over that subject (*First State Court Case, supra,* p. 227).

In *First Los Angeles Case,* the question presented was whether Congress had occupied the field and thereby divested the State Commission of power to

require railroads to construct a union station of the character involved in these proceedings. This Court stated:

> "Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920."
>
> *First Los Angeles Case, supra,* p. 341.

This Court, in affirming the judgment of the State Court, pointed out specifically the manner in which Congress had occupied the field and thereby divested the State Commission of power to order the Railroads to construct the union station.

After analyzing various provisions of the Interstate Commerce Act, as amended by the Transportation Act, 1920, this Court held (p. 343):

> "It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce Commission all increased facilities in the matter of distribution of cars and equipment and in joint terminals, in the exchange of interstate traffic and passengers between railways so as to make it prompt and continuous. It not only provides for the temporary expropriation of terminals and main track of one railway to the common use of one or more other railways in an emergency, but it also contemplates the compul-

sory sharing of one company's terminals with one or more companies as a permanent arrangement. This is a drastic limitation of a carrier's control and use of its own property in order to secure convenience and dispatch for the whole shipping and travelling public in interstate commerce. It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, *to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.*" (Italics ours.)

Second Los Angeles Case involved the question whether the Interstate Commerce Commission had been vested with the *compulsory* power to order the Railroads to build a union station, and this Court held that Congress had not authorized the Interstate Commerce Commission to exercise such *compulsory* power. This Court held:

> "It is quite true that we made references in the opinion to a case foreshadowed in the hypothetical certificates of the Commission in the building of a union station. Such references, had, however, not the slightest significance in respect to who could or should build the station, or whence its cost should be defrayed. It was as far as possible from the purpose of the Court in its opinion to indicate its views of the powers which the Commission could exercise adversely to the carriers in compulsory proceedings. They were not before the Court for adjudication."

Second Los Angeles Case, supra, p. 71.

In the *Second State Court Case, supra* (R. p. 193), the Court placed an erroneous interpretation upon the decisions of this Court in holding that "under the decision of the United States Supreme Court * * * Congress has merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations".

The decisions of this Court *(First Los Angeles Case and Second Los Angeles Case)* admit of no such interpretation; but, on the contrary, distinctly hold that Congress has manifested its intention to exert its exclusive power to control the establishment of union stations, such as the State Commission has ordered the Railroads to construct.

This Court disposed of the argument advanced by the State Commission in *First Los Angeles Case* that the supervisory power of the Interstate Commerce Commission over existing terminals did not "include the installation of an interstate union station, where its terminals and main tracks are newly built, and the interstate carriers are compelled to expropriate, not the terminal property of another interstate carrier, but property of others than carriers not theretofore used for terminals * * *", by stating:

> "This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important

union stations of interstate carriers to the control of state commissions. We think, however, that means of control over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18) to (21) of Section 402." (p. 344)

This Court distinctly held that it was not the intention of Congress to vest the Federal Commission with control over unimportant union stations and leave the larger and more important union stations to the control of State Commissions, but that it was the intention of Congress to exert exclusive control of all new union stations of interstate carriers except those of the character to which the Court referred at pages 345-346 in *First Los Angeles Case, supra:*

"One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the state for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers." * * * "But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that

> of mere degree; they and their consequences are so marked as to constitute a change in kind."

This Court clearly indicated the utmost limits of the power of states with respect to union stations and held that a state may direct the construction at railroad crossings or connections of merely local union stations or terminals in cases which do not involve the extensions of main lines or substantial capital outlay.

The power which may be exercised by the states in the establishment of local union stations does not extend to such a union station as is involved in this case. With respect to such union stations, the states no longer have any control.

In *First Los Angeles Case, supra,* p. 344, this Court held that a certificate from the Interstate Commerce Commission was necessary before a new union station, which involves a substantial extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals, could be constructed.

In *Second Los Angeles Case, supra,* p. 71, this Court, in referring to what it had held in its previous decision, stated:

> "We held such a certificate to be necessary before a union station or connecting lines of interstate carriers could be lawful."

It is apparent from the decisions of this Court that Congress has occupied the entire field of establishing union stations of interstate carriers involving extensions, extensive changes, relocation, or joint use of main line and terminal tracks. With respect to existing terminals, the Interstate Commerce Commission is given the power and the duty is imposed upon it "where the public interest requires, to make out of what is a passenger and freight station of one interstate carrier, a union station or depot". With respect to the establishment of new union stations for interstate carriers, the Interstate Commerce Commission is given the power to determine whether they are necessary in the public interest, and if found to be necessary, to *authorize* the railroads involved to establish such a station. With respect to existing terminals the Commission is given the power to *compel* the establishment of union stations. With respect to new union stations, the Commission is given the power to *authorize* but not to *require*. This power is referred to in the *Second Los Angeles Case* as "discretionary leave for the erection of such stations".

(2-3) Joint Use of Main Lines and Terminal Facilities and Connections Between Main Lines.

These requirements of the Commission's order necessarily involve the attempted exercise of a power by the State Commission which has been expressly vested in the Interstate Commerce Commission and is therefore void. By paragraph (4) of Section 3,

Congress has conferred upon the Interstate Commerce Commission authority to require railroads to share the use of their terminals and terminal facilities, including their main line tracks, for a reasonable distance outside of such terminals, with other carriers. And this power, not only authorizes the Interstate Commerce Commission to compel carriers to permit of such joint use of their terminals and main line tracks, but also to fix reasonable compensation for the use so required.

It is deemed unnecessary to extend the argument to convince the Court that the State Commission cannot arrogate to itself this power which Congress has expressly confided to the Interstate Commerce Commission. This question is disposed of in *Alabama Ry. v. Jackson Ry.*, 271 U. S. 244, 250.

In the case cited this Court decided that since the enactment of the Transportation Act, 1920, jurisdiction to order a connection between the main lines of two or more railroads engaged in interstate as well as intrastate commerce is vested exclusively in the Interstate Commerce Commission. This Court held, page 250:

> "The establishment of junctions between the main lines of independent carriers is commonly connected with the establishment of through routes and the interchange of car services, and is often but a step toward the joint use of tracks. Over all of these matters the Commission has exclusive jurisdiction."

(4-5) Extension of Main Lines and Station Tracks.

The State Commission's order requiring the Railroads to extend their main lines so as to reach the union passenger station, which they are ordered to construct, and to construct joint station tracks and other terminal facilities incidental to the use of such station, likewise is an attempted exercise of a power by the State Commission which has been expressly conferred upon the Interstate Commerce Commission.

Paragraphs (18) - (21), Section 1 of the Act, vest the Interstate Commerce Commission with power and authority to regulate the extension of the main lines of railroad. This power is and must necessarily be exclusive. Paragraph (18) vests the Commission with power to *authorize* but not to *require* all construction and extension of lines. The extension of lines necessary to reach a union station at Los Angeles falls within this provision of the statute and the Railroads may not extend their lines until a certificate of public convenience and necessity has been obtained from the Interstate Commerce Commission. This Court held:

> "Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals."
>
> *First Los Angeles Case, supra,* p. 344.

The power vested by paragraph (18) is permissive. It is what this Court characterized in *First Los Angeles Case* as "discretionary leave". It is inconceivable that Congress, in vesting its Commission with this permissive power, intended that the states might convert permissive certificates issued by its Commission into compulsory orders, thereby imposing a double restraint upon the carriers, namely, the necessity of a certificate from the Federal Commission to be supplemented by an order from the State Commission commanding carriers to extend their lines, thereby authorizing the State Commissions to exercise whatever power they possessed to order extensions prior to 1920.

In paragraph (21) of Section 1, the Commission is given such compulsory power over the extension of lines as Congress deemed necessary. It is unnecessary to determine exactly what power Congress intended to delegate to its Commission by enacting paragraph (21). At least three interpretations are possible: First, that Congress intended to vest its Commission with all the power which Congress could constitutionally delegate with respect to compulsory extension of lines; second, that Congress intended to delegate the power to compel extensions of lines to insure proper car service, as those words are used in the Act; third, that Congress intended to delegate such power to order extensions of lines as might be reasonably necessary in order that the carriers might

properly perform all the duties required of them by the Act.

Whatever construction may be placed upon the words "And to extend its line or lines," as they appear in paragraph (21) it is manifest that the power is exclusive and that no power remains in the State Commission to order interstate carriers to extend their lines. Congress has occupied the field of compulsory extension under whatever construction this Court may finally place upon paragraph (21). The power which Congress has vested in its Commission is necessarily exclusive.

Ever since the passage of the Transportation Act carriers have been making applications, under the provisions of paragraph (18), to obtain certificates permitting them to extend their main lines of railroad. Carriers are required to obtain such certificates from the Commission before extending their lines, upon the theory that the Interstate Commerce Commission should exercise control over extensions of main lines of railroad, to prevent unnecessary and uneconomical construction. But the certificates issued under such applications are not commands. When a carrier has obtained such a certificate or permission, it may or may not construct the extension of its line which the Commission has authorized. Frequently conditions change and the carriers conclude not to construct the extension. If it should be decided that a certificate,

which a carrier has obtained authorizing an extension of its lines, may be changed from a permission into a command against the will of the carrier by an order of a State Commission, carriers will hesitate to place themselves in a position where the discretion which Congress was careful to permit them to exercise may be taken away by a compulsory order of a State Commission. Instead of placing upon the carriers a single restraint, as Congress in requiring the issuance of a certificate by its permission intended, the carriers will be placed under a double restraint; namely, the necessity of obtaining a certificate from the Interstate Commerce Commission, and the liability that such certificate may be converted into an order by a State Commission. To hold that a State Commission may convert such a permission into a command, is to allow the state governments to place a burden upon interstate commerce.

By paragraph (22) of the same section Congress has specifically set forth what character of new construction is not within either the permissive power, "discretionary leave," or compulsory power conferred upon the Interstate Commerce Commission and which the states may therefore regulate.

Congress has specifically designated the field within which the state power is applicable, and such designation precludes any argument that Congress intended that the states might exercise compulsory power within the field, either of the permissive or compulsory

power which has been vested in the Federal Commission.

The State Commission, in ordering the Railroads to extend their main lines, is acting to supplement the power of "discretionary leave" which Congress has conferred upon the Federal Commission by exercising a compulsory power which, under the decisions of this Court, it may not do.

(6-7) Abandonment of Main Lines and the Operation Thereof.

Paragraph (18), Section 1, vests the Interstate Commerce Commission with full control over the abandonment of lines and the operation thereof, except as provided by paragraph (22) of Section 1, which defines the field within which the states may regulate such matters.

In *Colorado v. United States,* 271 U. S. 153, 168, this Court held that Congress has assumed exclusive regulation of the abandonment of lines or of the operation thereof, and that in determining whether the proposed abandonment is consistent with public necessity and convenience, the Interstate Commerce Commission "must have regard to the needs of both intrastate and interstate commerce. For it was a purpose of Transportation Act, 1920, to establish and maintain adequate service for both". This decision establishes the exclusive power of the Federal Commission in these particulars.

CONGRESS HAS FULLY OCCUPIED THE FIELD AND THE STATE HAS BEEN DIVESTED OF THE POWER TO ORDER EXTENSIONS, ABANDONMENTS, CONSOLIDATIONS OF TERMINALS, JOINT USE OF TERMINALS AND INTERCHANGE OF TRAFFIC.

We have undertaken to deal with the specific requirements of the Commission's order in an endeavor to show that the State Commission, by entering its order, has undertaken to exercise powers which have been vested exclusively in the Interstate Commerce Commission. The provisions of the statute, to which we have referred separately, are each an integral part of the Interstate Commerce Act and should be considered *in pari materia.*

The purposes of Congress are to be determined not merely by considering separately the regulations contained in the Act to Regulate Commerce, as amended by the Transportation Act of 1920, but by this legislation considered in its entirety.

In deciding cases which have arisen subsequent to the enactment of the Transportation Act, this Court has clearly indicated the wide scope of this congressional legislation and held that it was the purpose of Congress to enact a law complete in itself to accomplish the ultimate purpose of providing the people of the United States with an adequate transportation system.

First Los Angeles Case, supra;
Alabama, etc. Ry. v. Jackson, etc. Ry., supra;
Colorado v. United States, supra;

Texas & Pacific Ry. v. Gulf, etc. R. Co., 270 U. S. 266;

Dayton-Goose Creek Ry. Co. v. United States, 263 U. S. 456;

New England Divisions Case, 261 U. S. 184;

Railroad Comm. v. C. B. & Q. R. R. Co., 257 U. S. 563.

In *Alabama Railway v. Jackson Railway, supra*, this Court held (p. 249):

> "The only limitation set by Transportation Act, 1920, upon the broad powers conferred upon the Commission over the construction, extension and abandonment of the lines of carriers in interstate commerce, is that introduced as paragraph 22 of Section 1, which excludes from its jurisdiction 'Spur, industrial, team, switching or side tracks, located wholly within one state, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.'"

See also *Colorado v. United States, supra.*

This Court has held in the two cases, which it has heretofore decided in connection with the establishment of the proposed union station, that Congress has manifested its intention to exert its exclusive power to control the establishment of union stations for interstate carriers involving extensions, abandonments, extensive changes, relocation, and joint use of main line and terminal tracks.

Under the decisions of this Court, it is elementary that the right of a state to exert its police power for the purpose of regulating interstate commerce exists only from the silence of Congress on the subject. When Congress manifests its intention to occupy the field its power over such subject is exclusive and the authority of the state ceases.

This Court's decision leaves no room for doubt as to the powers of the State Commission over the establishment of new union stations, and the unique—not to say absurd—situation which would arise if the Interstate Commerce Commission possessed the lesser power to make joint terminals out of existing terminals while the State Commission possessed the greater power to order the establishment of new union stations. Such a situation would mean that there would be divided authority over the same subject matter in direct conflict with the decisions of this Court.

The congressional scheme contemplates that new union stations may only be erected by the voluntary act of the carriers under permission of the Interstate Commerce Commission authorizing the carriers to make necessary extensions, abandonments and joint use of tracks, virtually leaving it to the business judgment of the carriers to determine whether such structure should be constructed. The construction of union stations is not within the absolute duties of the carriers, and the public interests may be adequately protected by orders issued by the state commissions re-

quiring carriers to provide adequate individual passenger station facilities to serve the patrons of their respective lines.

It was manifestly the intention of Congress that in respect to the establishment of union stations the power of the Federal Commission should be limited to create union stations by the utilization of existing terminals so as to more completely effectuate the congressional policy of providing the people of the United States with an adequate transportation system without extravagant outlays for monumental union stations designed primarily to gratify the civic pride of ambitious communities. If the forty-eight state commissions had not been divested of the power to compel carriers against their will to embark upon such costly enterprises at the instance of local communities actuated by civic pride and aesthetic considerations, the national policy declared by Congress in the Transportation Act would be seriously impaired if not defeated.

The law was designed to prevent such extravagance, but nevertheless to permit the carriers when sanctioned by the Federal Commission to erect union stations whenever in their judgment it was desirable to do so to meet the requirements of their patrons.

When Congress Occupies the Field Relating to Interstate Commerce, a State Statute is Superseded Even Though the Federal Statute Does Not Cover the Subject as Fully and Completely as the State Law.

Even though the Interstate Commerce Commission has not been vested with power to *order* carriers to establish new union stations, this Court held in *First Los Angeles Case, supra,* and *Second Los Angeles Case, supra,* that the Federal Commission has been vested with jurisdiction to *regulate* the establishment of new union stations involving the extension and abandonment of lines, the joint use of terminals, the consolidation of terminals, connections between lines of railroads and to create a union station or depot out of existing passenger stations.

Congress having occupied this field, the state statute seeking to regulate such matters is thereby annulled although the federal statute does not cover the subject as fully and completely as the state law.

The principle is cogently expressed by Mr. Justice Holmes, speaking for the Court in *Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co.,* 237 U. S. 597 (604):

> "When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go."

It is elementary that where Congress has legislated, the federal as distinguished from the state law con-

trols. Otherwise Congress would be denied the right to exercise its constitutional authority and the state and not the nation would be supreme within the national field.

By conferring upon the Interstate Commerce Commission the power to compel carriers to make union stations out of existing stations and by giving the Commission "discretionary leave" or power to authorize railroads to join in the construction of new union stations, Congress has indicated the extent to which it wishes to exert its exclusive power with respect to the construction and establishment of union stations and the extent to which it wishes this subject to be regulated. The State of California may be of the opinion that Congress has not gone far enough in the regulation of the establishment of new union stations and may wish to supplement the requirements prescribed by Congress, but the state is impotent to supplement or add to the requirements prescribed by Congress.

In *Penn. R. R. Co. v. Public Service Commission*, 250 U. S. 566, 569, this Court held:

> "But when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the states no more can supplement its requirements than they can annul them."

Had Congress intended that there should be this division of power or that the state might supplement

its regulatory requirements it would undoubtedly have manifested this intention by the use of appropriate words to that effect, just as it clearly indicated in paragraph (22) of Section 1, that it did not intend to regulate "the construction or abandonment of spur, industrial team, switching or side tracks, located or to be located wholly within one state", but left the regulation thereof to the states. Certainly there are no words in the Interstate Commerce Act manifesting any intention on the part of Congress that the states, under the guise of establishing union stations, might compel railroads to erect costly and expensive monuments to the civic pride of cities or other communities.

Congress having evinced an intention to regulate the construction of new union stations for interstate carriers, and having prescribed the extent to which it wishes them regulated, it must be deemed to have determined that the regulation provided is all that is necessary in the public interest, and the states are without authority or power to provide any additional or supplemental regulation.

If there were any question on this point, it is disposed of by the decision of this Court in *Missouri Pacific Ry. v. Porter*, 273 U. S. 341.

In the case cited a shipment moving in interstate and foreign commerce was destroyed by fire at the point of origin in Arkansas without fault on the part of the carrier. The bill of lading under which

the shipment moved exempted the carrier from liability for such loss but a statute of Arkansas provided that a provision in bills of lading exempting carriers from liability for any loss by fire was void. No act of Congress or order of the Interstate Commerce Commission prescribed the form of bill of lading for this shipment, but paragraph 6 of Section 1 of the Interstate Commerce Act requires all carriers subject to the Act to establish and enforce just and reasonable regulations affecting the issuance, form, and substance of bills of lading. This Court, in reversing the State Court decision, which held the carrier liable, held (p. 345):

> "The general regulation of the 'issuance, form, and substance' of bills of lading is broad enough to cover contractual provisions, like the one involved in this case, exempting railroads from liability for loss of shippers' property by fire. Congress must be deemed to have determined that the rule laid down and the means provided to enforce it are sufficient and that no other regulation is necessary. Its power to regulate such commerce and all its instrumentalities is supreme; and, as that power has been exerted, state laws have no application. They cannot be applied in coincidence with, as complementary to or as in opposition to, federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction."

The same rule was applied by this Court in construing the validity of the New York Hours of Service Act, which went further than the Hours of Service Act, which had been enacted by Congress:

> "It admits of no supplement; it is a prescribed measure of what is necessary and sufficient for the public safety and of the cost and burden which the railroad must endure to secure it."
>
> *Erie R. R. Co. v. New York,* 233 U. S. 671, 683.

Such cases as *Missouri Pacific Railway v. Larabee Mills,* 211 U. S. 612, *Savage v. Jones,* 225 U. S. 501, *M. K. & T. Ry. v. Harris,* 234 U. S. 412, and *Sligh v. Kirkwood,* 237 U. S. 52, afford no authority for the exercise by the State Commission of the power that it is seeking to exercise in the case under consideration.

The *Larabee Mills Case* was explained by this Court in *Oregon, Washington Company v. Washington,* 270 U. S. 87, 102, as "one on the border line, three judges dissenting". The Court stated:

> "The number of cases decided since that case and above cited have made it clear that the rule, as it always had been, was not intended in that case to be departed from. That rule is that there is a field in which the local interests of states touch so closely upon interstate commerce that, in the silence of Congress on the subject, the

states may exercise their police powers; and local switchings, as in that case, and quarantine, as in the case before us, are in that field. But when Congress has acted and occupied the field, as it has here, the power of the states to act is prevented or suspended."

The other three cases and the principles applied therein have no application to the case under consideration. They dealt with entirely different situations. They were decided in accordance with the established rule that a state law enacted under any of its reserved powers, especially if under the police power, is not to be set aside as inconsistent with an act of Congress unless there is actual repugnancy or conflict, or unless the state under the guise of its police power is undertaking what amounts essentially to regulation of interstate commerce, or unless the state is imposing a direct burden upon that commerce.

The inapplicability of the cited cases to the one under consideration is made clear by contrasting those cases with the decision of this Court in *New York Central Railroad Co. v. Winfield,* 244 U. S. 147. In that case it was held that an award made under the New York Workmen's Compensation Act for injuries not attributable to negligence, received by an employee of an interstate railroad carrier while both were engaged in interstate commerce,

cannot be upheld even though the Federal Employers' Liability Act imposes liability only for injuries due to negligence.

The Court further held (page 153):

> "Thus the act is as comprehensive of injuries occurring without negligence, as to which class it impliedly excludes liability, as it is of those as to which it imposes liabilty. In other words, it is a regulation of the carriers' duty or obligation as to both. And the reasons which operate to prevent the states from dispensing with compensation where the act requires it equally prevent them from requiring compensation where the act withholds or excludes it."

In the last cited case, unlike the three other cases previously cited, the state undertook to regulate within a field that had been delegated to Congress under the Constitution. When Congress manifested its intention of exerting its exclusive power in that field, the state was without power in that field even though the state legislation did not conflict with the Act of Congress. In the three cases, the states were exercising reserved powers, powers not delegated to Congress, and they could continue to exercise those powers as long as they did not actually conflict with the exercise of powers delegated to Congress. The reason why the states cannot exercise their reserve powers in actual conflict with powers delegated to Congress is that the laws of the United States are made paramount and, therefore, when the exercise of

reserved powers by the states conflict with the exercise of powers delegated to Congress, the state powers necessarily become inoperative.

In the case at bar, the State Commission is endeavoring to regulate the instrumentalities of interstate commerce. The State Commission is acting within a field occupied by Congress. As held by this Court in the *First* and *Second Los Angeles Cases*, Congress has manifested its intention of exerting its exclusive power in this field by conferring upon the Interstate Commerce Commission the power to permit carriers to establish new union stations and to extend their lines, and the power to require carriers to make joint use of terminal main line tracks and to make connections between main lines. Since Congress has manifested its intention of regulating these instrumentalities of interstate commerce, the State Commission cannot lawfully exercise any power with respect to them though they may also be used in intrastate commerce. The state is seeking to piece out or supplement the regulation provided by Congress and as held in *New York Central Railroad Co. v. Winfield, supra,* this cannot be done.

As stated by this Court in *Southern Railway Company v. Railroad Commission of Indiana*, 236 U. S. 439, 448:

> "The test, however, is not whether the state legislation is in conflict with the details of the federal law or supplements it, but whether the

> state had any jurisdiction of a subject over which Congress had exerted its exclusive control."

The power sought to be exerted by the State Commission falls within the rule announced by this Court in *Lehigh Valley R. Co. v. Pub. U. Comm.*, 278 U. S. 24.

The State Commission's order does not rule "parochial matters" but it directly and seriously affects the "economical management and service" of the railroads. This Court held in the case last cited that *First Los Angeles Case, supra,*

> "makes a distinction between the local character of the usual elimination of grade crossings and the vital character from the standpoint of finance of the investment of large sums in the erection of a union station".

The Order of the State Commission Cannot Be Supported or Rendered Valid by Certificates Issued by the Interstate Commerce Commission.

The Railroads do not concede the validity of any certificates which have been issued by the Interstate Commerce Commission, but, if it be assumed for the purposes of argument that the certificates which have been issued are valid, the fact nevertheless remains that the State Commission has, as hereinbefore indicated, undertaken to exercise powers which have been confided to the Interstate Commerce Commission by the Interstate Commerce Act and to regulate matters

which are within the exclusive jurisdiction of the Federal Commission.

No power has been vested in the Interstate Commerce Commission which will permit it to delegate any power which it may possess to a State Commission, and therefore the State Commission cannot sustain its order because of any such reflected power. The Federal Commission may not combine any power confided to it nor share any such power with the State Commission, and cannot by issuing "hypothetical" or other certificates permitting the extension or abandonment of lines, confer any authority upon a State Commission to enter an order such as has been attempted in these proceedings. Any certificates which have been issued by the Interstate Commerce Commission, whether or not they be valid, cannot furnish the basis or warrant for an order of the State Commission to require or command the Railroads to take any action thereunder.

There Cannot Be a Divided Authority Between the Federal and State Commissions.

The State Court's decision is predicated upon the fundamental fallacy that the authority to regulate the establishment of new union stations, involving extensions, extensive changes, relocations, joint use of main line and terminal tracks, and interchange of traffic is divided between the Federal and State Commissions and that a state statute or order of a State Commission may be rendered valid or invalid by the action or inaction of a Federal Administrative Board.

Any power which the State Commission may exercise is derived from the Public Utilities Act of the State of California and particularly from Section 36 thereof, but the question does not relate only to the validity or invalidity of that statute in its application to interstate carriers as affected by the provisions of the Transportation Act of 1920, but also whether the power which the State Commission has sought to exercise invades the field which has been occupied by Congress.

The State Court has placed an erroneous interpretation upon the decisions of this Court in holding "that Congress has merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations" (*Second State Court Case, supra,* R. p. 193).

The State Court virtually holds that the Interstate Commerce Commission only possesses the authority to determine whether the necessity for constructing a new union station exists, and that by issuing certificates it may authorize the carriers to establish such stations; that on the other hand the State Commission has the power to compel the establishment of a new union station whenever the Federal Commission has issued such certificates. In other words the State Court's decision is to the effect that the power of the State Commission to compel is dependent upon the Federal Commission's certificates to authorize. This is a rule predicated upon the division of power which this Court has held cannot exist.

"It is elementary and well settled that there can be no divided authority over interstate commerce, and that the Acts of Congress on that subject are supreme and exclusive."

Missouri Pacific R. Co. v. Stroud, 267 U. S. 404, 408.

The decisions rendered by this Court in the *First Los Angeles Case, supra,* and in the *Second Los Angeles Case, supra,* emphasize the rule that the jurisdiction of the Federal Commission is paramount and therefore must necessarily be exclusive.

Neither the Federal Nor the State Commissions Have Been Vested With Power to Give Effect to Orders Entered by the Other.

The Interstate Commerce Commission in *First Federal Commission Decision, supra,* made a finding (p. 460):

"That the present and future public convenience and necessity require and will require (among other things), the extension by defendants of their respective main lines of steam railroad in the City of Los Angeles, California, so as to reach and properly serve any union passenger station and terminal * * * (within a defined area) which they or any of them may construct and establish in accordance with a *lawful order* of the Railroad Commission of California * * *." (Italics ours.)

This decision was made subsequent to the time the California Commission's order was annulled by the State Court and the State Court's judgment had

been affirmed by this Court. That is, the State Commission had not at that time entered a "lawful order".

The proceedings before the California Commission were, over the objection of the Railroads, reopened, and the order under review subsequently entered which provided by its terms that "it should become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed * * *," and it was provided that the issuance of such certificates by the said Commission "shall be and constitute a condition precedent to the effectiveness of said order of this commission" (*Third State Commission Decision, supra,* R. p. 134).

The State Commission's order was thus made dependent upon the issuance of certificates by the Interstate Commerce Commission.

Upon application by the California Commission the Interstate Commerce Commission reopened the proceedings and certified:

> "That the present and future public convenience and necessity require the construction (by the Railroads) of extensions of their main lines of railroad * * * so as to reach and serve a union passenger station and terminal, which they may construct in the Plaza District pursuant to the order

of the Railroad Commission of the State of California to that effect * * *." (R. pp. 153, 154.)

The result is that the order of the State Commission, under review, and the certificates of the Interstate Commerce Commission are expressly made interdependent.

There is no provision contained in the Interstate Commerce Act and the act is not susceptible to the interpretation that Congress intended to vest the Interstate Commerce Commission with power to issue certificates for the purpose of giving validity to orders of State Commissions or that Congress intended to vest the Interstate Commerce Commission with power to enter orders or certificates which should be dependent and conditioned upon the action of the subordinate state legislative tribunals.

Neither is there any provision contained in the Public Utilities Act of the State of California authorizing the State Commission to enter orders dependent upon action by the Interstate Commerce Commission.

The Federal and State Commissions are expressly vested with power to act within their respective fields. The amendments made to the Interstate Commerce Act by the Transportation Act, 1920, enlarged the powers of the Interstate Commerce Commission so as to vest it with full and complete authority to regulate the carriers engaged in interstate commerce and as this Court has held "puts the railroad systems of the

country more completely than ever under the fostering guardianship and control of the Interstate Commerce Commission".

The power of Congress is supreme and plenary and Congress has indicated in no uncertain terms that it intended to vest the Interstate Commerce Commission with power to regulate the carriers subject to its jurisdiction without interference by, or aid from, State Commissions and that it did not intend that the powers vested in Congress should be made dependent upon state action.

A diligent examination of the authorities has failed to reveal another case where the Interstate Commerce Commission has concluded that it has not been vested with a power which it has been requested to exercise and nevertheless sought to exercise such power indirectly by issuing certificates of public convenience and necessity, conditioned and dependent upon an order of a state commission with the expressed intention of having its certificates made mandatory by such order.

Likewise, this is the only instance where a state commission has by cooperating with the Interstate Commerce Commission attempted to assert a power of which it has been divested by the enactment of a Federal statute.

In the event the judgment of the State Court is affirmed, the inevitable result will be that state commissions will thereby be authorized to usurp powers

which have been expressly vested in the Interstate Commerce Commission and it will virtually authorize the Interstate Commerce Commission to indirectly require railroads to construct union stations and thereby exercise authority which this Court has held to be in excess of that conferred upon it by Congress.

To sustain the judgment of the State Court would result in a departure from the long line of decisions of this Court holding that the power of Congress to regulate interstate commerce is supreme and plenary, acknowledges no limitations other than those prescribed by the Constitution, that where Congress has occupied the field the state power ceases to exist and when Congress manifests its purpose to exercise its constitutional authority a state law, which attempts to occupy the same field or go further than Congress has seen fit to go, is rendered ineffective and is superseded.

II.

THE CERTIFICATES OF THE INTERSTATE COMMERCE COMMISSION ARE VOID.

(Specification of Error II.)

The order of the State Commission directed its attorney to "forthwith file with the Interstate Commerce Commission a copy of this order, together with such appropriate petition or application as may be necessary in the premises requesting and praying that the Interstate Commerce Commission issue such certificates or other appropriate order or orders as

may be requisite or proper in order to render this order effective" (R. p. 134).

In *Second Federal Commission Decision, supra,* 493 (R. p. 142), the Interstate Commerce Commission stated:

> "The California State Commission has filed with us its petition for final order. * * * The petition of the city of Los Angeles for the issuance of certificates and the making of final order is somewhat more extensive than the petition of the California State Commission, but the relief sought is the same."

The certificates declare that present and future public convenience and necessity require (1) the extension of main lines of railroad; (2) the abandonment of such portions of main lines of railroad as may become necessary to the proper operation of the union station; (3) the abandonment of main line operation of Southern Pacific Company on Alameda Street; (4) the use by the railroads of so much of the terminal main line tracks of any of the other railroads as may be necessary to the proper operation of a union passenger station—all as set out in the State Commission's order (R. pp. 131-134) and in its plan known as Exhibit 4 B (R. p. 267).

THE CERTIFICATES COULD NOT LAWFULLY BE ISSUED UNDER PARAGRAPHS (18), (19) AND (20) OF SECTION 1 OF THE INTERSTATE COMMERCE ACT.

They Were Issued Not On Application of the Railroads, But In Proceedings Adverse to Them and Over Their Protest.

The certificates were issued in a proceeding entitled *City of Los Angeles v. L. A. & S. L. R. R. Co.*, 142 I. C. C. 489 (R. pp. 135 and 153-4). In its report the Commission said that the railroads raised (R. p. 143) "the constitutional issues as to the power of this Commission under the Interstate Commerce Act".

Mr. Commissioner Brainerd in his dissenting opinion (R. p. 153) said, "Certificates of public necessity and convenience are proposed to be issued upon complaint by the City of Los Angeles and others, not upon the application of any carrier, and in fact over the objection and protest of all the defendant carriers".

Appellants could not by injunction or otherwise correct the Commission's action because it was not mandatory.

United States v. L. A. & S. L. R. Co., 273 U. S. 299.

Paragraphs (18), (19) and (20) of Section 1 Do Not Give the Commission Power to Issue Certificates Except On Application of Carriers.

In the *Second Los Angeles Case, supra*, this Court said (page 71): "It was as far as possible from

the purpose of the Court in its opinion (i. e. in *First Los Angeles Case, supra*) to indicate its views of the powers which the Commission could exercise adversely to the carriers in compulsory proceedings."

In *Texas, etc. Ry. Co. v. Gulf, etc. Ry. Co., supra,* the opinion contains the following, at page 272:

> "Paragraph 18 prohibits construction of an extension without obtaining the certificate. Paragraphs 19 and 20 provide that a carrier desiring to construct one may apply for the certificate."

In *C. C. C. & St. L. Ry. Co. v. United States,* 275 U. S. 404, 408 it is said:

> "These paragraphs ((18) to (21)) relate to the construction, acquisition, extension and abandonment of a railroad. They deal primarily with rights sought to be exercised by the carrier."

The purpose of paragraphs (18) to (20) was to protect interstate commerce from undue burdens or discrimination, *Colorado v. United States, supra;* to prevent carriers from weakening themselves by constructing or operating superfluous lines and to protect them from being weakened by another carrier constructing a competing line not required in the public interest.

Texas, etc. Ry. Co. v. Northside Belt Ry. Co., 276 U. S. 475.

The proceedings in the Congress show that applications under these paragraphs (18) to (20) were

intended to be made by the carriers. See quotations in MacVeagh Transportation Act, 1920, pp. 220, 221, 222.

The forms and orders issued by the Federal Commission for applications show that the Commission made no provision for applications by others than carriers (*Id.* pp. 224, 226, 230-3). We have found no other instance in which application has been made under paragraph (18) by other than a carrier. Similar provisions are found in many state statutes (see MacVeagh Transportation Act 1920, p. 220); and we have found no instance of application by other than a carrier under any of those statutes.

Mr. Reynolds at page 330 of his work entitled "Distribution of Regulation of Carriers between State and Nation" endorses the same interpretation.

Procedure to be followed in applying for certificates under paragraph (18) is found in paragraphs (19) and (20). Paragraph (19) provides for the application, the notices. No notice is to be served on the carrier—obviously because the carrier is to be the applicant.

When Congress intended that proceedings against carriers might be taken by the Commission on complaint or on its own motion such intention is clearly expressed as in paragraphs (9), (13), (15), (16) and (21) of Section 1; paragraph (10) of Section 5;

Section 13; paragraphs (3), (6), (7) and (13) of Section 15 and Section 16.

PARAGRAPH (21) OF SECTION 1 DOES NOT GIVE THE COMMISSION AUTHORITY TO ISSUE THE CERTIFICATES.

This paragraph provides:

> "The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines * * *."

Clearly there is nothing contained in this provision of the statute authorizing certificates for abandonment of lines or relating to the joint use of lines.

We submit that the extension of lines is to be such as will enable the carrier to perform its duties as to car service but "car service" is expressly limited to transportation of property and has no reference to passenger business or, of course, to passenger stations. Paragraph (10) Section 1 provides:

> "The term 'car service' in this Act shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of

equipment, and the supply of trains, by any carrier by railroad subject to this Act."

Had Congress intended to vest the Federal Commission with the power it has sought to exercise in these proceedings it "would not have left its intention to be evolved from obscure language but would have put it in explicit declaration and given notice of time and accommodation to it".

United States v. Pennsylvania R. Co., 242 U. S. 208.

"We should expect the intention to be manifested in plain terms and not to be inferred from varied interpretative provisions of uncertain scope."

Second Los Angeles Case, supra, p. 70.

In *Alabama & Vicksburg Ry. Co. et al. v. Jackson & Eastern Ry. Co., supra*, which involved the jurisdiction of the Interstate Commerce Commission over physical connections between railroads, this Court held that by paragraph (21) the Federal Commission was authorized to require a railroad to extend its line or lines for the purpose of making such connections. It was solely in this connection that the Court referred to the power of the Commission to require a carrier to extend its line or lines. The power of the Interstate Commerce Commission was enlarged in these particulars so as to render it certain that car-

riers subject to its jurisdiction could be required to provide interchange of cars and equipment and provide facilities by which such interchange could be facilitated.

The power to "authorize" given by paragraph (21) is coupled with and seems to be coextensive with the power to compel or "require"; but the Court in the *Second Los Angeles Case, supra,* did not intimate that mandamus might have been granted to order the Commission to act under paragraph (21) upon the city's complaint *so far as it sought an extension of lines.*

Again, the Commission's powers and all of them given by paragraph (21) may be put in action on its own initiative or on complaint. Certainly a complaint must allege some default, some failure of the carrier to fulfill its statutory duties. Now is it possible that the appellant L. A. & S. L. R. Co., operating on the east bank of the river, violated any provision of the Interstate Commerce Law by not bridging the stream and hauling its passenger trains to the west bank?

Unless the phrase "and to extend their lines" is limited to car service as above suggested, there would seem to be no standard set by the Act for the guidance of the Commission in exercising its powers as to extensions. Such a standard must be found in the Act.

Union Bridge Co. v. United States, 204 U. S. 364, 384, 385; cited and approved in *United States v. C. M. St. P. & P. R. Co.*, ___ U. S. ___ (not yet officially reported, see Oct. 1930, Term, No. 10, Advance Opinions, 75 L. Ed. 142, 145).

If the phrase "and to extend their lines" were intended to confer upon the Interstate Commerce Commission the power to compel extensions other than those needed to provide "car service", it would impose a construction on the Act which at once raises grave constitutional questions under the Fifth Amendment. Such a construction will be avoided.

United States v. Delaware etc. Co., 213 U. S. 366, 407-8;

State of Texas v. United States, 258 U. S. 204.

THE QUESTION OF THE VALIDITY OF THE CERTIFICATES WAS DECIDED BY THE STATE COURT AND IS DULY PRESENTED HERE.

The State Commission, on July 8, 1927, ordered that its command to install the tracks, connections and buildings for a complete union station should become effective "from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates" etc. (R. p. 134). The statute of California (Sec. 67 of "Public Utilities Act", see Appendix p. xvii) provides that petitions for rehearing must be filed within thirty days after the Commission's de-

cision is rendered; that is in this case not later than August 7, 1927. Such petitions were filed July 16 and 21, 1927 (R. p. 3).

The certificates in question were not issued until May 8, 1928 (R. pp. 135, 153). Copies were filed by the State Commission in its offices without prior notice to the appellants (R. p. 4). Order denying rehearing was then entered by the State Commission May 26, 1928 (R. p. 4). Thereupon appellants petitioned the State Court for writs of certiorari to review the Commission's decision (R. p. 4).

The State Court in its opinion said:

> "The Railroad Commission of California then made the order under review here, which * * * was made conditional upon the issuance by the Interstate Commerce Commission of proper and sufficient certificates covering and authorizing the constructions, extension and abandonments authorized in said order of the Railroad Commission. Such certificates were issued later by the Interstate Commerce Commission * * * and the order of the Railroad Commission, to which the carriers are here objecting, became effective." (R. 189.)

Appellants then filed a joint petition for rehearing, in which they urged that the certificates were void and that the State Commission's order had not become effective. This petition was included in the record (R. p. 5) as it shows that the validity of the certificates

was challenged below but was excluded by the Clerk in printing. So much of the petition for rehearing as is necessary to show that this question was raised is printed in the Appendix (p. xix).

The petition was denied (R. p. 199). The question is therefore properly and directly presented for determination here.

State of Mo. v. Gehner, 281 U. S. 313.

Paragraphs (18)-(21), Section 1, read together and construed in harmony with the entire Act show clearly that paragraph (21) is not susceptible to the interpretation which has been placed upon it by the Interstate Commerce Commission, the California State Commission and the State Court, and leads to the conclusion that Congress has not vested the Federal Commission with power to grant certificates permitting the extension of main lines of railroads in proceedings either instituted by the Federal Commission upon its own motion or upon the relation of others than the carriers. The certificates which have been issued by the Federal Commission are therefore void and of no force and effect, and they cannot vitalize or make effective the order which has been entered by the State Commission requiring extensions of the lines of railroads essential to carry into effect the ultimate requirement of the State Commission's order to construct and maintain a union station.

III.

THE STATE COMMISSION'S ORDER DEPRIVES THE RAILROADS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW AND DENIES THEM THE EQUAL PROTECTION OF THE LAWS AND TAKES THEIR PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION, IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(Specification of Error III.)

The Railroads contend that the State Commission's order is beyond the field of constitutional legislation and that their rights have been impaired because the order requires them to abandon adequate terminal stations, station sites and facilities, substantial portions of their main lines of railroad, to acquire and dedicate to public use lands and rights of way, a large part of which is not now owned by the Railroads and none of which has been dedicated to public use, to extend their main lines of railroad to reach territory which they have not heretofore undertaken to serve, to permit the joint use by one or more of the Railroads of facilities owned by the others, to obtain franchises permitting the extension of their main lines across streets in the municipality, for which they have never applied and do not desire, all at the sole cost and expense of the Railroads, involving an expenditure of millions of dollars, with no provision for making adequate or any compensation therefor.

The principles for which the Railroads contend have been firmly established by the decisions of this Court and of the lower Federal Courts. In *Northern Pacific v. North Dakota,* 236 U. S. 585-595, it was held:

> "But, broad as is the power of regulation, the state does not enjoy the freedom of an owner. The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, or the imposition of restrictions that are not reasonably concerned with the proper conduct of the business according to the undertaking which the carrier has expressly or impliedly assumed. If it has held itself out as a carrier of passengers only, it cannot be compelled to carry freight. As a carrier for hire, it cannot be required to carry persons or goods gratuitously. The case would not be altered by the assertion that the public interest demanded such carriage. The public interest cannot be invoked as a justification for demands which pass the limits of reasonable protection and seek to impose upon the carrier and its property burdens that are not incident to its engagement."

The principle announced in the case last cited was recognized in *Chesapeake & Ohio Ry. Co. v. Public Service Commission,* 242 U. S. 603, the Court saying, at page 606:

> "It well may be that the power of regulation which a State possesses over private property de-

voted to public use gives no warrant for requiring that an existing line of railroad lawfully devoted to a particular public use, such as carrying freight, shall be devoted to a further public use, such as carrying passengers."

These cases sustain the rule for which the Railroads contend, that while the states may make reasonable regulations of property which has been dedicated to public service, the states cannot constitutionally require the carriers to extend their main lines of railroad to reach territory which they have not heretofore undertaken to serve.

In rendering its decision in *Oregon R. & N. Co. v. Fairchild,* 224 U. S. 510, this Court held, page 528:

> "Since the decision in *Wisconsin M. & P. R. Co. v. Jacobson,* 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, there can be no doubt of the power of a state, acting through an administrative body, to require railroad companies to make track connection. But manifestly that does not mean that a commission may compel them to build branch lines, so as to connect roads lying at a distance from each other; nor does it mean that they may be required to make connections at every point where their tracks come close together in city, town, and country, regardless of the amount of business to be done, or the number of persons who may utilize the connection if built."

So also, in the case of *McNeill v. Southern Railway Company,* 202 U. S. 543, this Court held that a State

Commission lacks power to direct carriers to deliver all cars beyond their right of way onto a private site, and signified its approval of the decision by the Circuit Court of Appeals in *Central Stock Yards Co. v. Louisville & N. R. Co.*, 118 Fed. 113. The Court decided that the Commission could not compel the carrier to deliver cars and freight received from one state to another at a particular place and in a particular manner.

This Court has consistently guarded the constitutional rights where the states or their subordinate legislative tribunals have undertaken to overstep the bounds of the police power and endeavored to take property without providing just compensation therefor. This policy was forcibly expressed by this Court in rendering its decision in the case of *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393, 415:

> "The protection of private property in the 5th Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. A similar assumption is made in the decisions upon the 14th Amendment. *Hairston v. Danville & W. R. Co.*, 208 U. S. 598, 605, 52 L. ed. 637, 639, 28 Sup. Ct. Rep. 331, 13 Ann. Cas. 1008 When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States."

In *Southern Bell Telephone Co. v. Town of Calhoun*, 287 Fed. 381, the District Court cited with approval *Atchison, Topeka and Santa Fe Ry. Co. v. California Railroad Commission*, 173 Cal. 577, in support of its judgment annulling a joint resolution adopted by the Assembly of South Carolina which required a telephone company to establish and maintain a telephone exchange for the convenience of other communities which were not served by the utility. The Federal Court held that the resolution adopted by the State Assembly could not be construed as an act to regulate the business of the utility nor the exercise of the police power of the state, but that it was

> "a bald attempt to require plaintiff to enter a new field of operation, to establish a business in a new territory which it has not heretofore entered or sought to enter, to invest its capital at places and under conditions, which neither its own desire nor the requirements of its charter, franchises, or contractual obligations in any way require * * *. It would be hard to conceive of anything more destructive of business enterprise and progress or more calculated to disturb the confidence of the individual in the security of his property and in the equal protection of the laws than to sustain such legislation."

The latest decision relating to this question is *Oregon, Washington Railroad & Navigation Co. v. U. S.* (District Court of the United States for the District of Oregon, Jan. 29, 1931), not yet officially published where a three judge court in

determining that the Interstate Commerce Commission does not have the authority to require carriers to extend their line or lines, relied upon *Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission, supra,* which the Court characterized as "an able and well considered opinion", and other cases hereinafter cited, and enjoined an order of the Interstate Commerce Commission from which it appeared that the "carrier was plainly required to devote its property to a service which it has never presumed to render and to a service entirely beyond the scope of the undertaking which it has expressly or impliedly assumed".

It is true that there are cases such as *People, ex rel. New York and Queens Gas Co. v. McCall,* 245 U. S. 345, and *New York ex rel v. Public Service Commission,* 269 U. S. 244, where companies furnishing gas, water, electric and telephone service have been required to extend their facilities, but as pointed out in *O. W. R. & N. Co. v. U. S., supra,* these decisions have no application in cases such as this.

A distinction is to be made between facilities provided and service rendered by a railroad company, and a water and gas company. A steam railroad does not "undertake" to bring its rails to the homes and places of business of its patrons in order to serve them. It "undertakes" to serve only those patrons who come to it. This distinction is made plain in the *Atchison case, supra,* and *Hollywood Chamber of Com-*

merce v. California Railroad Commission, 192 Cal. 307.

In *First Los Angeles Case, supra,* p. 346, this Court stated:

> "The extensions of the lines and main tracks of these railways under the plan which the State Commission has ordered are not great in distance, but they involve a new intramural destination for each railway, with important changes in the handling of interstate traffic and passengers. Great expense attends such changes of the main tracks in a crowded city, and they here carry with them, as necessarily incident thereto, the abandonment of available sites and of valuable existing passenger and freight stations, and the construction of a new union station elsewhere, * * *".

Whether the new location of a terminal be distant a mile or ten miles, the rule of the law is identical. In either case it is equally beyond the power of the State Commission to compel the railroad to provide a station at a new site, for the reason that this would be tantamount to compelling the railroad to provide a service which it never has undertaken to render. When a railroad establishes a terminal in a city it does not thereby undertake to move that terminal to any other point within the city, and cannot be compelled to do so provided the facilities which it has provided are adequate and convenient.

The question under discussion was presented to the State Court for determination at the time the Rail-

roads petitioned for writs of certiorari from the first order rendered by the State Commission, but the State Court did not find it necessary to dispose of these questions in that proceeding (*First State Court Case, supra,* 227.)

The points which were left undecided by the State Court in that case were each presented in this case, and, in support of the Railroads' contention, decisions heretofore rendered by the State Court and believed by the Railroads to be controlling were cited but given no consideration.

Decisions heretofore rendered by the California State Court correctly announce the rule which should govern and place an interpretation upon Section 36 of the Public Utilities Act of the State of California which should be applied in the case at bar.

In *First State Court Case, supra,* p. 228, Chief Justice Shaw in his concurring opinion says:

> "Entirely new tracks will have to be built to reach the new depot, and the land on which it is to be erected and on which the track is to be built will have to be acquired by the said companies, or by some subsidiary company in which they are all interested, and vast sums of money must be used in constructing the buildings and tracks required for the union depot.
>
> "If this be true it is equally beyond the power of the Interstate Commerce Commission to make the order. To require the railroad companies to

construct this depot and the tracks necessary therefor is equivalent to ordering them to dedicate new property to a public use. I know of no power which will justify the state in commanding a railroad company to thus acquire and dedicate property to a public use."

The rule announced in this concurring opinion of the Chief Justice had been announced in a former case, *Atchison, etc. Ry. Co. v. Railroad Commission, supra,* and was followed by the State Court in the later case, *Hollywood Chamber of Commerce v. Railroad Commission, supra.*

In *Pacific Telephone & Telegraph Co. v. Eshleman,* 166 Cal. 640, the Court had occasion to consider the constitutional limitations which had been placed upon the power of the Commission by the Federal and State Constitutions. The question there under consideration was whether the Commission had power to order a telephone company to make physical connection with two other telephone companies. The Court held that the order could not be made, and discussed in some detail the question of what exceeds the power of *regulation,* which is the limit of power of the Commission or any other agency of the state under the police power. Such order, the Court said, constitutes a confiscation or taking of property without compensation, and is, therefore, unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States.

Pacific Telephone and Telegraph Co. v. Eshleman, supra; A. T. & S. F. Ry. Co. v. The Railroad Commission, supra; and *Hollywood Chamber of Commerce v. Railroad Commission supra,* sustain the contention that the California Railroad Commission has never had power under the state statute within constitutional limitations to require railroads to acquire and dedicate to public use lands and rights of way, extend their main lines of railroad to reach territory which they have not undertaken to serve, and to comply with the other requirements of the State Commission's order.

The principles established by the foregoing cases have been applied by other State Courts in cases where the facts were substantially similar to those of the case at bar:

Oklahoma Natural Gas Co. v. Oklahoma Corporation Com., 88 Okla. 51;

Oklahoma Natural Gas Co. v. Scott, et al., 115 Okla. 8;

Montgomery v. Southwestern Arkansas Telephone Co., 110 Ark. 480;

State v. Public Service Commission, 287 Mo. 522;

State, etc. v. Public Service Commission, 270 Mo. 429;

United Fuel Gas v. Public Service Commission, 105 W. Va. 603;

Public Service Commission of Maryland v. United Railway Co., 126 Md. 478;
Towers, et al. v. United Railways & Electric Co., 126 Md. 478;
People, ex rel. etc. v. Stevens, et al., 197 N. Y. 1, 10;
People, ex rel. etc. v. Stevens, et al., 203 N. Y. 7, 19.

In rendering its decision in the case at bar the State Court ignored the decisions cited which it had previously rendered, wherein this well established principle had been recognized, and erroneously predicated its decision on the cases which had been decided by the Courts of other states wherein the facts involved were essentially different from those in the case at bar.

The State Court cited a number of cases as supporting its decision, but the following analysis of those cases shows that in the light of the decisions of this Court and of previous decisions of the State Court, they do not justify the conclusion reached.

In *Railroad Commission of Alabama v. Northern Alabama Ry.*, 182 Ala. 357, the State Commission's order required several railroads either to construct a union station at a designated site or one of the railroads specified in the order to build the station and the others to join in the use upon such terms as might be agreed upon by all. The suing carrier was

not the one ordered to build the union station if all did not join therein. The carrier sought to enjoin the enforcement of an order requiring the establishment of a union station on the ground that the Alabama statute authorizing the Railroad Commission to require two or more railroads to erect a union depot was unconstitutional. The Court held that the carrier had no standing to raise the constitutional question because the order of the State Commission did not make it imperative upon complainant to join in the construction of the union depot.

In *Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 185 Ala. 354, the question which we are here considering was not controverted, and was not discussed by the Court. The power of the state to compel all railroads entering a given city to use a union station was conceded. The controverted question was whether the state could compel the railroads to jointly acquire the necessary land and to jointly construct the building. The Court said:

> "If the state has the power to which we have referred, and that power seems to be conceded, then it has the corresponding authority to put that power into exercise."

Dewey v. Atlantic Coast Line, et al., 142 N. C. 392 is not in point. That was an action by a group of property owners to enjoin the railroads from carrying out an order of the Commission to construct a union station at a site selected by the railroads, which

order the railroads desired to obey. It was held that the railroads were proceeding to do an authorized act in a lawful manner and that there was no legal wrong done the plaintiffs.

Griffin v. Southern Ry. Co., 150 N. C. 312, is equally irrelevant. In that case an injunction was sought by an abutting property owner to prevent the railroad from using a street to reach the union station referred to in the preceding case and it was held that plaintiff was not entitled to an injunction.

In *Corporation Commission v. Seaboard Air Line Ry. Co.*, 161 N. C. 270, the sole question reviewed (aside from a procedural question) was whether the validity of an order requiring two railroads to join in a union station could be attacked upon the ground that the erection of the station at the point designated would take away the business of a rival town. The case is not at all in point.

North Carolina Corp. Comm. v. Southern Ry. Co., 185 N. C. 435, is not at all in point. It concerned merely the validity of an order requiring two *intersecting* railroads to maintain a union station *at the junction point*. The question of the power of the state to compel an extension of lines or the use of the tracks of one railroad by another was not involved therein.

In *State v. St. Louis, etc. Ry. Co.* (Tex. Civ. App.), 165 S. W. 941, the question of the power of the state to compel a railroad to extend its lines to enter a union station does not appear to have been raised, nor was

the question of the power of a state to compel one railroad to permit another railroad to use its terminal main line tracks without providing for compensation. At any rate, these questions are not discussed in the opinion.

State v. St. Louis, etc. Ry. Co. (Tex. Civ. App.), 199 S. W. 829, involved further litigation in the matter reported in 165 S. W. 941, *supra*. The only questions discussed in the opinion are procedural questions which throw no light upon the questions which we are here considering. This decision was later reversed in *St. Louis etc. Ry. Co. v. State* (Tex. Com. App.), 255 S. W. 390, on a question of procedure.

Gulf, Colorado & Santa Fe Ry. Co. v. State (Tex. Civ. App.), 167 S. W. 192, is not in point herein because it related to two intersecting railroads and the order of the Commission was construed by the Court as requiring them to construct a union station "at or near the junction of their lines of railroad".

In *State v. Atlantic Coast Line, et al.*, 67 Fla. 441, the Court upheld an order of the State Commission requiring two railroads to build a union station at a point of intersection or crossing. The case did not involve the question whether carriers can be compelled to extend their lines to reach a new union station in a location not adjacent to their lines, nor did it involve the question whether a state can compel one railroad to permit the use of its terminal main line tracks by another carrier without making provision for compensation for such use.

In *State v. Jacksonville Terminal Co.*, 71 Fla. 295, the State Supreme Court held void an order of the Railroad Commission requiring several railroads and a terminal company to join in the erection of "a new, better and larger," terminal station upon a site apart from the site of the existing terminal station then in use. The Court's conclusion upon this point is correctly summarized in the last paragraph of the syllabus, as follows:

> "The statutes do not confer upon the Railroad Commissioners any power that may fairly be regarded as authorizing the Commissioners to make an order requiring a local terminal company and the railroad companies that are its patrons jointly to *change the location of the terminal company's depot or terminal,* * * *" (Italics added).

It is but fair to add that the Court does say in its opinion:

> "There is authority to compel the *railroads* entering the city to erect, operate and maintain a joint passenger terminal or union depot, even though the effect of such order would be to require the railroads using the present terminal depot to withdraw from it."

That statement, however, was pure *obiter dictum.*

Wisconsin, Minnesota and Pacific Railroad v. Jacobson, 179 U. S. 287, 302, is not at all in point. It involved solely an order requiring two *intersecting* railroads to provide, *at the point of intersection,* "facilities for the interchange of cars and traffic".

Denver & Rio Grande R. Co. v. City and County of Denver, 250 U. S. 241, is equally irrelevant.

In *Mayor & Aldermen of Worcester v. Norwich and Worcester R. R. Co.,* 109 Mass. 103, the Court predicated the power of the state to compel the railroads to extend their tracks so as to reach the union station upon the reserved power to alter, amend or repeal its charter.

Missouri O. & G. Ry. Co. v. State, 29 Okla. 640, did involve the question of the power of a state to compel a railroad to extend its lines to reach a union station, but that case was decided upon the authority of the Massachusetts case of *Mayor, etc. v. Norwich, etc., supra,* which, as we have shown, is contrary to the decisions of the Supreme Court of California and of this Court. The Oklahoma Court said that the doctrine of this Massachusetts case was cited with approval by this Court in *Northern Pacific R. Co. v. Dustin,* 142 U. S. 492. In this, however, the Oklahoma Court was mistaken. The Massachusetts case was not cited therein at all, and its doctrine certainly was not approved therein as the decision of this Court was quite the opposite of the decision of the Massachusetts Court.

The Oklahoma Court also held that the order of the State Commission could be justified on the ground that the same was a valid exercise of the police power of the state, citing in support thereof, *State v. Kansas City etc. Ry. Co.,* 32 Fed. 722. That case, however,

did not involve the question of the power of a state to compel an extension of lines to reach a union station. It was a suit to recover a penalty for the violation of an Act of Missouri requiring every railroad company in the state engaged in the transportation of persons or property, at all crossings and intersections of other railroads at the same grade, to erect, build and maintain, either jointly with the railroad crossed, or separately by each railroad, a depot under penalty of a forfeiture of a certain sum for failure to do so.

In *Chicago, etc., Ry. v. State,* 90 Okla. 173, the Oklahoma Court, by a four-to-three decision, affirmed the power of the Commission to require railroads to construct a union station, but it does not appear that any question was raised as to the power of the state to compel railroads to extend their lines in connection with or for the purpose of reaching such a union station. The Court said that the power in question

> "was settled and established by a long line of decisions of this court, both upon the theory the same was a proper exercise of its police power, *or of the right reserved to the Legislature to amend, alter, or repeal the charter of said railroad*" (Italics added).

The Court in the Oklahoma case also criticized as unsound and refused to follow the decision of the California Court in the *First State Court Case, supra,* which was affirmed shortly thereafter by this Court in the *First Los Angeles Case, supra.*

Missouri etc. Ry. Co. et al., v. State, 38 Okla. 401, involved an order of the Oklahoma Commission requiring three railroads to build a joint passenger depot at a location adjacent to the three roads. It was held that the order was unreasonable and unjust in that a union depot on the proposed site would increase the hazard of the employes and patrons of the railroad. No other question was considered in the case. The cause was remanded to the Commission for further proceedings.

Only two courts, those of Massachusetts and Oklahoma, have directly passed on the power of a state to compel a railroad to extend its lines for the purpose of joining in a union station at a point apart from its existing tracks, and these courts sustained the power of a state to do this upon the ground that it is comprised within the reserved power "to amend, alter or repeal charters". This Court has rejected the theory that a state may compel a railroad to so extend its main line tracks under the reserved power to amend, alter or repeal charters.

Superior Water Co. v. Superior, 263 U. S. 125, 136;

Chicago, etc. R. R. Co. v. Wisconsin, 238 U. S. 491, 501.

Under the decisions of this Court, a state cannot justify, under its police power, the requirement that a railroad extend its main line tracks for the purpose of joining in a union station at a point apart from

its existing tracks, without the payment of compensation for the property so taken.

In *Delaware, etc., Ry. Co. v. Morristown,* 276 U. S. 182, 193, this Court held:

> "The police power may be and frequently it is exerted to effect a purpose or consummate an enterprise in the public interest that requires the taking of private property; but, whatever the purpose or the means employed to accomplish it, the owner is entitled to compensation for what is taken from him."

The order of the State Commission requires the Railroads to extend their main line tracks for the purpose of joining in a union station at a point apart from their existing tracks. Assuming that the state has the power to order the establishment of a union station at Los Angeles and that the establishment of such a union station is in the public interest, this enterprise cannot be consummated without taking property of the Railroads for public use to the extent that it is necessary to abandon adequate terminal sites and facilities, substantial portion of their main lines of railroad and dedicate to public use lands and rights of way and to extend their main lines of railroad in order to reach a territory which they have not undertaken to serve. Under the decision last cited this property of the Railroads cannot be taken without providing compensation therefor.

As pointed out by this Court in the *Second Los Angeles Case, supra,* at p. 70, the expenditure of the large

amount of money necessary to construct the proposed union station and other facilities "will not bring with it corresponding increase in the railroad revenues". As a matter of fact, it cannot be said that the Railroads will receive any additional revenues by reason of extending their lines to reach the proposed union station, so manifestly, there will not be any revenues which can be regarded as compensation for the taking of their property. It appears from the record in this case (R. pp. 278, 279) that the passenger business of the Railroads has been decreasing and this Court may take judicial notice of the fact that the passenger revenues of these and other railroads have continued to decrease, due to the use of other means of transportation such as airplanes, motor busses and private automobiles.

The Interstate Commerce Commission in its 44th Annual Report to Congress, issued December 1, 1930, states:

> "With a plant developed to carry a great volume of passenger business, the railways find themselves confronted with a steady lessening in the volume of passenger travel by rail and consequently in gross revenues from that source. The passenger revenue of 1929 was over $414,000,000 less than that of 1920" (R. p. 78).

Page 138 from the same report shows gross revenue in 1920 to have been $1,286,613,000, and in 1929, $872,466,000, a decrease of 30 per cent.

The reports of the Railroad Commission of the State of California for the year ending June 30, 1927 (pp. 372, 378, 384) when compared with the report of the same Commission for the year ending June 30, 1929 (pp. 356, 362, 366) show a decrease in the passenger revenues of the three appellants of 15 per cent between June 30, 1927 and June 30, 1929.

Under such circumstances the prospect of receiving additional passenger revenues which might possibly be considered as compensation (assuming that additional revenues would be compensation) for the taking of this property is very problematical.

It is submitted that the cases decided by this Court, the lower Federal Courts and the State Courts upon which the Railroads rely sustain the contention that the State Commission may not lawfully, under the guise of exercising its police power or at all, require the Railroads which are now prepared to provide each for itself safe, adequate, convenient and sufficient facilities, to expend large sums in extending their lines and in providing other and different station facilities which are not within their absolute duties, and which requires them to furnish a service which they have not undertaken to render, or at a place where they have not undertaken to serve without adequate or any compensation.

Oregon R. R. & N. Co. v. Fairchild, supra.

It is not within the absolute duties of the Railroads to provide the facilities which the State Commission's

order requires them to construct. There is no imperative duty resting upon them to abandon existing railroad terminal facilities which are adequate, or can easily be made adequate, for the needs of their respective business and so far as the Southern Pacific and Santa Fe are concerned are adequate to accommodate the entire traffic of all three lines, in order to establish at enormous expense a union terminal at a new location, to gratify the civic pride of a city, or to solve a grade crossing problem.

The absolute duties of the Railroads are limited to furnishing reasonable and adequate facilities to their several patrons. If a station is too small a railroad may be required to enlarge it. If a station burns down a railroad may be required to replace it. These are matters within the realm of regulation under the police power. These are but carrying out obligations incurred when it entered upon the field of its activity, but to require a railroad company to abandon its own adequate facilities and to go elsewhere than on its own property and acquire additional land and construct new facilities to be used jointly by itself and other railroad companies is outside the realm of regulation, is not within the police power and impairs the constitutional rights of the Railroads.

THE RAILROADS ARE DENIED THEIR CONSTITUTIONAL RIGHTS BY FAILURE OF THE STATE COMMISSION TO PROVIDE COMPENSATION FOR THE USE OF THEIR RAILROAD PROPERTIES BY ONE ANOTHER.

The order of the State Commission involves:

> "The use by any defendant steam carriers of so much of the terminal main line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, as may be incidental, necessary or convenient, to the proper operation of any such union passenger station * * *" (R. p. 132).

The tracks and other properties now owned by the Railroads in severalty, which must be appropriated and used jointly for the purpose of carrying the Commission's order into effect, appear from the Commission's Exhibits 4, 4-b, 5 and 6 (R. pp. 227, 267).

The Commission's order makes no provision whatsoever for payment of any compensation by the Railroads to one another for the use of their facilities, and no other provision of any kind for such compensation has been made.

Under the decisions of this Court the State Commission has no authority to require the Railroads to permit the use of their property by one another because that authority has been conferred upon the Interstate Commerce Commission by paragraph (4) of Section 3 of the Interstate Commerce Act. But if it be assumed that the California Commission, not-

withstanding the powers which have been vested in the Interstate Commerce Commission, is authorized to compel one railroad to permit the use of its tracks by another railroad, it has not exercised this power in accordance with statutory and constitutional requirements. It has failed to provide compensation for the use which it seeks to compel and, therefore, its order is void under the Constitution of the United States in that it involves a taking of property without due process of law.

Under the decisions of this Court, the tracks and other property of the railroad constitute private property, and it cannot be appropriated in whole or in part, except upon the payment of compensation. *Western Union Telegraph Company v. Pennsylvania Railroad Company, et al.*, 195 U. S. 540, in which case this Court held (page 570):

> "A railroad's right of way has, therefore, the substantiality of the fee, and it is private property even to the public in all else but an interest and benefit in its uses. It cannot be invaded without guilt of trespass. It cannot be appropriated in whole or in part except upon the payment of compensation. In other words, it is entitled to the protection of the Constitution, and in the precise manner in which protection is given. It can only be taken by the exercise of the powers of eminent domain, and a condition precedent to the exercise of such power is, we said, in *Sweet v. Rechel* (159 U. S. 380, 399), that the statute conferring it make provision for reasonable

compensation to the owner of the property taken."

In *Louisville & Nashville Railroad Co. etc. v. Central Stock Yards Company,* 212 U. S. 132, it was held (page 144):

"There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport and deliver all live stock consigned from the Central Stock Yards to any one at the Bourbon Stock Yards. This also is based upon the sections of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville and Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified, unless the railroad holds that property subject to greater liabilities than those incident to its calling alone. The Court of Appeals did not put its decision upon any supposed special liability, but upon the broad ground that the state constitution requires it and lawfully may require it of a common carrier by rail."

The same principle is involved in *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 327.

The rule that the compulsory use of the property of one railroad by another is a taking of property, is well expressed in *Louisville & Nashville Railroad Company v. Interstate Railroad Company*, 108 Va. 502, 505:

> "It is clear that to take from a railroad company the exclusive right to the use of its property, or any part thereof, and limit its use therein to a particular purpose and give another railroad company an equal or joint right in the use of it for that purpose, is a taking within the meaning of the Constitution."

The Virginia case was cited with approval in *Southern Railway Company v. Shealy, et al.* (D. C. South Carolina), 18 F. (2d) 784. In that case the Court held that an order of a state railroad commission requiring an interstate railroad company to furnish the use of terminal facilities and tracks to another company was void on the ground that the power to regulate the use of terminal facilities and tracks of an interstate railroad is vested in the Interstate Commerce Commission to the exclusion of the states, and on the further ground that it failed to make any provision for compensation in violation of the constitutional provision against the taking of property without compensation.

In *Sand Springs Railroad Company, et al., v. Oklahoma Union Railway Company* (Okla.), 227 Pac. 430,

the Supreme Court held, as shown by the syllabus (by the Court):

> "An order of the Corporation Commission which authorizes the use of a portion of the main line of a railway in making a physical connection between two other railroads as provided for by section 2, art. 9, of the Constitution of Oklahoma, and by sections 5483 and 3458, Compiled Oklahoma Statutes 1921, which makes no provision for compensation being first made therefore, constitutes a taking of such company's property without compensation and in violation of the Constitution; such order being an attempted exercise of the power of eminent domain and not an exercise of the police power of the state."

The provisions of Section 41 of the Public Utilities Act of California, (printed in Appendix), authorizes the State Commission to compel one railroad to permit the use of its tracks by another railroad; but this section expressly provides that if the railroads fail to agree upon such use and the compensation therefor "the Commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation * * * for the joint use".

Under the decisions of the Supreme Court of the State of California, the order of the State Commission requiring the railroads to permit the use of their tracks by one another without provision for compensation is a taking of the railroad's property without due process of law, contrary to the State Constitution and to that of the United States.

In *Pacific Telephone etc. Co. v. Eshleman, supra,* the order of the State Commission required the Pacific Telephone & Telegraph Company to permit a physical connection or connections to be made between its telephone lines and the lines of other companies. As stated by the Court (page 646),

> "the order of the Railroad Commission gives to the Tehama County Telephone Company and the Glenn County Telephone Company and their subscribers the use of all the extended long distance service maintained by the Pacific Telephone and Telegraph Company within the State of California,"

but the order of the Commission made no provision for compensation for such use. It was held that the order in question involved an exercise of the power of eminent domain and not of the police power; that the payment of compensation for such use must be made in advance of the actual taking; and that the order in question admittedly gave no compensation for the taking of the property of the Pacific Telephone and Telegraph Company, and was, therefore, void by force and virtue of the Constitution of the State and of the United States. The Court said (page 688):

> "But while the compensatory award in such cases rests with the railroad commission, it is still the duty of that commission to make compensation for such a taking. This not only by virtue of section 14 of article I of the constitution, but as well by the provisions of the Public Utilities Act itself. For example, in section 41,

dealing with the taking of property through the use thereof, the act declares that the railroad commission shall 'prescribe a reasonable compensation and reasonable terms and conditions for the joint use.' We do not find in the Public Utilities Act any intent to deprive a public utility, whose property is so taken, of the compensation *in advance,* which is the due, under our state constitution, of the owner of any other kind of property. * * * But no necessity, however urgent, justifies a taking of property without compensation."

Congress, in enlarging the powers of the Interstate Commerce Commission by the amendments contained in the Transportation Act, recognized that the "power and duty where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot," is as this Court held in *First Los Angeles Case, supra,* "a drastic limitation of a carrier's control and use of its own property." This power can not be exercised constitutionally unless, as provided by paragraph (4) of Section 3 of the Act, when one carrier is compelled to permit another to use its property it is a taking of such property for public use for which compensation must be provided, and that compensation for the use so required must "be ascertained on the principle controlling compensation in condemnation proceedings (and that) such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced."

Under the decision of this Court in *Louisville & Nashville R. Co. v. Central Stock Yards Co., supra,* "simply paying for the service of carriage" by the using carrier does not constitute compensation for compulsory use by that carrier of the costly terminals of another carrier and for the making of the switching necessary to afford that use. So, in this case, even if one railroad received payment for the service of carriage of the trains of another railroad over its terminal main line tracks, this would not constitute the compensation that must be provided for under the constitution for the compulsory use of the property of one of the railroads by another.

As above pointed out the order of the State Commission requires the joint use of the tracks of the Railroads by one another without any provision for compensation for such use. However desirable and however necessary a new union station may be for the City of Los Angeles, it does not justify the state in disregarding constitutional guarantees in consummating that improvement. As was so aptly said by this Court in *Pennsylvania Coal Co. v. Mahon, supra,* 416:

> "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

This Court also said in the same case (p. 415) that when the seemingly absolute protection of the Four-

teenth Amendment is found to be qualified by the police power

> "the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States."

The desire for a union station at Los Angeles has induced a forgetfulness, in the order of the State Railroad Commission requiring these Railroads to permit the joint use of their tracks without any compensation being provided therefor, of the constitutional guarantees which protect private property. This order exemplifies "the natural tendency of human nature" to extend the qualification by the police power of the seemingly absolute protection under the Fourteenth Amendment until private property disappears. If one railroad can be compelled to permit another to use its tracks without any provision being made for compensation for such use, "private property disappears". "But", as said by this Court, "that cannot be accomplished in this way under the Constitution of the United States".

It is submitted that under the decisions of this Court and those of the State Courts, the State Commission may not lawfully, under the guise of exercising its police power or at all, require the Railroads to permit the use of their terminal main line tracks by one another without compensation for this use.

The order of the State Commission requiring this joint use fails to provide for such compensation and it, therefore, violates the constitutional guarantees of the State Constitution and of the Fourteenth Amendment to the Constitution of the United States and is void.

THE STATE COMMISSION CANNOT IMPAIR THE RAILROADS' CONSTITUTIONAL RIGHTS UNDER THE GUISE OF EXERCISING ITS POLICE POWER REQUIRING THE RAILROADS TO ELIMINATE GRADE CROSSINGS.

The Commission's three decisions are interrelated (R. pp. 85, 121, 127). The State Court stated "a similar order was made by the Railroad Commission in 1921" (R. p. 186).

In its first decision the Commission stated as one of its conclusions:

> "We believe that the terminal unification and the grade crossing problem should not be dissociated and that the adoption of a plan providing for both problems is essential." (R. p. 51.)

In paragraph "1" of its original order the Commission in referring to the grade crossings of Southern Pacific Company on Alameda Street ordered "that public interest and safety require that such dangerous conditions at said crossing be eliminated by the erection and use of a new structure or structures, to wit, a union passenger station * * *" (R. p. 75).

In its second decision upon application for rehearing the Commission stated that in its original decision it was "of the opinion that the only method of eliminating grade crossings from Alameda Street is to remove all main line traffic therefrom, but found that this can only be safely, effectively and satisfactorily accomplished by the construction of a depot at the Plaza" (R. p. 87).

Further, under their finding "3. Union Terminal":

> "Much testimony was thereafter given, and much argument made to the effect that a complete and satisfactory solution of the grade crossing situation was dependent upon a union depot at the Plaza, and the Commission finds this to be the fact. * * * As to the Southern Pacific depot, its continued use does not conform to any satisfactory plan for the elimination of the grade crossings on Alameda street" (R. p. 88).

It is apparent that the State Commission's several orders, including the order under review, have been deliberately framed with a view of making it appear that the establishment of a union passenger station at the designated Plaza site is indispensable to the proper elimination of dangerous grade crossings in the City of Los Angeles and that the Commission is seeking to accomplish indirectly what it sought to do directly in the former order which was annulled.

The State Supreme Court in the *First State Court Case, supra,* held that there was no merit in the Commission's contention that:

"the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of said grade crossings * * *" because "we can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see any insurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities."

The State Court's first decision is flatly reversed in *Second State Court Case, supra,* and the State Court in effect decided that the State Commission in the exercise of "its unquestioned police power to regulate grade crossings in the interest of public safety" may trench with impunity upon and usurp the power vested in the Interstate Commerce Commission by Congress to regulate union stations.

The State Court in *Second State Court Case, supra* (R. pp. 195, 6), admitted that there had been no finding of fact made by the State Commission that the passenger station and facilities of the Southern Pacific Company were inadequate, but rested its decision so far as Southern Pacific is concerned upon the ground that "there is, assuredly, an implied finding to this effect in the order of the Railroad Commission under review".

The Court further states:

> "The argument of the Southern Pacific Company that the evidence does not show that its passenger depot is inadequate, but on the contrary shows it to be adequate for some years to come loses sight of the fact that an adequate building alone will not constitute adequate passenger terminal facilities, but that a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination * * *".

There is no provision of the state law which authorizes the Commission or Court to make "implied findings" and the Court may not lawfully remedy a defect in the Commission's findings and order and thereby overcome the direct and uncontradicted evidence by any such procedure.

The right of the State Court to make "implied findings" is expressly negatived by the provisions of Section 67 of the Public Utilities Act and by the very decision of the State Court under review. The Court held:

> "Unless the action of the state commission is beyond its jurisdiction, its findings are binding upon us in this proceeding." (Quoting leading

case of *Pacific Tel. & Tel. Co. v. Eshleman, supra.*) (R. p. 196.)

This Court in *First Los Angeles Case, supra,* p. 341, approved the rule of law announced by the State Court in *First State Court Case,* holding that the question relating to the establishment of union depot facilities and the elimination of grade crossings should be considered separately upon the merits and that the state's police power to regulate grade crossings in the interest of public safety may not be exerted indirectly to require the establishment of a union station.

In *Lehigh Valley R. Co. v. Commissioners,* 278 U. S. 24, 35, this Court held:

> "The care of grade crossings is peculiarly within the police power of the States, *Railroad Comm'n. v. Southern Pacific Co.,* 264 U. S. 331, 341; and if it is seriously contended that the cost of this grade crossing is such as to interfere with or impair economical management of the railroad, this should be made clear. It was certainly not intended by the Transportation Act to take from the States, or to thrust upon the Interstate Commerce Commission, investigation into parochial matters like this, unless, by reason of their effect on economical management and service, their general bearing is clear. *Railroad Commission v. Southern Pacific Co.,* 264 U. S. 331. The latter case makes a distinction between the local character of the usual elimination of grade crossings and the vital character from the

standpoint of finance of the investment of large sums in the erection of a Union Station."

The State Commission's order requires the Railroads to expend at least ten million dollars in completing the work which they are required to perform. The State Commission cannot accomplish the ultimate object of eliminating grade crossings by requiring the Railroads to expend this large amount of money in the extravagant manner required by its order.

The establishment of a union passenger terminal in Los Angeles is not necessary to protect the public, and therefore the Commission's order cannot be regarded as a proper exercise of the police power of the state, but amounts to an attempt to appropriate the property rights of the carriers concerned without compensation, and therefore violates the constitutional rights of the Railroads guaranteed by the Fourteenth Amendment to the Constitution of the United States.

> "The public power to regulate railroads and the private right of ownership of such property co-exist and do not the one destroy the other; and where the power to regulate is so arbitrarily exercised as to infringe the rights of ownership the exertion is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment."
>
> *Atlantic Coast Line R. v. N. Car. Corp. Com'n.*, 206 U. S. 1.

IV (a).

THE STATE COMMISSION'S ORDER DEPRIVES SOUTHERN PACIFIC COMPANY OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW AND TAKES ITS PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION BECAUSE THE NECESSARY FORCE AND EFFECT THEREOF IS TO REQUIRE IT TO ABANDON MAIN LINE TRACKS, ADEQUATE EXISTING PASSENGER STATION AND STATION GROUNDS, ACQUIRE A NEW STATION SITE, RIGHTS OF WAY LEADING THERETO AND JOIN IN CONSTRUCTING NEW TERMINAL FACILITIES AT A NEW LOCATION AND EXTEND ITS MAIN LINES OF RAILROAD, FOR THE PURPOSE OF PROVIDING THE SANTA FE AND LOS ANGELES & SALT LAKE COMPANIES WITH ADEQUATE PASSENGER DEPOTS.

(Specification of Error IV(a).)

SOUTHERN PACIFIC STATION IS ADEQUATE.

There is no evidence in the record, neither is there any finding made by the State Commission in any of its several orders, including the order under review, nor is there any finding in either of the two decisions and orders of the Interstate Commerce Commission that the passenger station or passenger station facilities of Southern Pacific Company are inadequate.

The State Commission in authorizing the construction of the present station in 1915 said:

> "The structure to be erected under these plans will be efficient and ample to provide for the probable passenger traffic coming to and depart-

ing from a city several times the present size of Los Angeles."

3 *Opinions R. R. Comm. of Calif.*, p. 929.

Mr. Richard Sachse, the Commission's Chief Engineer, testified that:

> "The present Southern Pacific passenger station and incidental facilities are adequate for the Southern Pacific alone for the present time and for perhaps 20 years in the future." (R. p. 265.)

The Commission's Exhibit No. 1, introduced in evidence (R. p. 221) and transmitted to this Court as an original exhibit (Praecipe Item 54(a), R. p. 7) discloses, on page 337, the following statement:

> "This information has been supplemented by data for a proposed union station at the Southern Pacific site, and comparison between this station and the Chicago station may be made. Based on Chicago experience, the twelve tracks at the Southern Pacific station will be sufficient for the 140 trains expected in the future."

The record discloses that the number of steam passenger trains on all railroads in and out of Los Angeles today is 30 per cent less than it was a few years ago (R. pp. 278 *et seq.*).

> "In 1915 the three roads were handling 126.3 trains per day. This decreased to 87.7 per day in 1920 and decreased further to 82 trains per day in 1925, a decrease of 30 per cent in 5 years." (R. p. 278.)

In 1925 the Southern Pacific and the Salt Lake were operating 52 trains per day in the existing Southern Pacific-Salt Lake station (R. p. 277). This is the Southern Pacific station.

The uncontradicted evidence shows that the present station will accommodate at least 140 trains per day (Commission's Exhibit No. 1, p. 337), and discloses that the maximum number of Southern Pacific trains handled to June, 1926, including extra sections and movie trains, was 47 in any any one day.

The Interstate Commerce Commission stated in *First Federal Commission Decision, supra,* at page 432:

> "It (the Southern Pacific Station) is well designed, and is adequate and suitable for present purposes."

No witness in these proceedings has testified to the contrary.

The Commission's Exhibit No. 1, page 235, referring to Southern Pacific Company's station, states:

> "The present station is well designed and is adequate and suitable for its purpose."

SOUTHERN PACIFIC COMPANY CANNOT BE COMPELLED TO INCUR THE EXPENSE OF PROVIDING ADEQUATE STATION FACILITIES FOR OTHER LINES.

The order is susceptible to no other interpretation than that the State Commission is seeking to accom-

plish indirectly what it sought to do directly in its former order, which was annulled, eliminate grade crossings on Alameda Street and provide adequate passenger station *buildings* for The Atchison, Topeka and Santa Fe Railway and Los Angeles & Salt Lake Railroad. It is admitted by both the last-named railroads that their passenger station *buildings* are inadequate, but the evidence and the State Commission's findings show conclusively that in other respects the passenger terminal facilities of those carriers are adequate.

Whatever the necessities of these last-named railroads may be, the State Commission cannot constitutionally enter an order requiring Southern Pacific Company to join in the expense of establishing a union passenger station to meet their requirements.

So far as concerns the conclusion of the State Court to the effect that because the Southern Pacific must spend its money either in a change of its tracks or a change in its terminal, the Commission had power to order that it be spent for a union station "because of the need for a new terminal by the other two carriers", we submit is but to say that the Southern Pacific is required to make the expenditures for the direct benefit of the other carriers. But the Southern Pacific in law is not responsible for the Santa Fe's and Salt Lake's needs. Obviously, therefore, an order, based on this ground, is an invasion of the Southern Pacific's constitutional rights.

IV(b).

THE STATE COMMISSION'S ORDER DEPRIVES THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND LOS ANGELES & SALT LAKE RAILROAD COMPANY OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW AND DEPRIVES THEM OF THE EQUAL PROTECTION OF THE LAWS, BECAUSE THE NECESSARY FORCE AND EFFECT THEREOF IS TO REQUIRE THESE RAILROADS TO JOIN WITH OTHER RAILROADS IN THE CONSTRUCTION OF A UNION STATION TO ACCOMPLISH THE PURPOSE OF ELIMINATING GRADE CROSSING OF SOUTHERN PACIFIC COMPANY ON ALAMEDA STREET, WITH WHICH THEY HAVE NO CONCERN.

(Specification of Error IV(b).)

There is no evidence, neither is there any finding that the present terminal *sites* of the Santa Fe and Salt Lake lines are inadequate. In fact the report of the Commission's engineers states that the Santa Fe site is "too large" for the location of a union station (R. p. 60). It is true that the evidence discloses that the present terminal passenger station *buildings* of these railroads are inadequate, and further that these railroads have been and are now ready, willing and anxious to erect suitable buildings upon those sites when permitted to do so by the Commission. The necessary effect of the Commission's order is to compel the Santa Fe and Salt Lake Railroads, although by indirection, to expend millions of dollars to correct a grade crossing situation upon the lines of the Southern Pacific Company.

Yet the California Commission by its order has attempted to force, uncompensated, a relocation of these expensive Santa Fe facilities in order to separate highway grade crossings traversing the line of a rival railroad system.

We have hereinbefore indicated wherein the Commission has endeavored to support their order requiring the Railroads to establish a union station by exercising the power which they possess to compel the elimination of grade crossings existing upon the lines of Southern Pacific Company, and pointed to the decisions of the State Court and of this Court wherein it is held that these two subjects of regulation are unrelated and should be considered and determined separate and apart from one another.

All grade crossings of the Santa Fe and the Salt Lake on the westerly and easterly banks of the Los Angeles River have been eliminated (R. p. 128); and so far as these railroads are concerned all grade crossing problems have been solved.

To compel the Santa Fe Railway and the Salt Lake Railroad to incur the expense of changing their long-established method of operation and to join in the expense of constructing, maintaining and operating a union station and to abandon adequate passenger terminal sites, takes the property of these railroads without due process of law and denies them the equal protection of the law in violation of the

Fourteenth Amendment to the Constitution of the United States.

The power sought to be exercised goes not merely to the regulation of the Railroads and their business, but passes beyond proper regulation and amounts to a taking of their property, and the order is therefore referable, not to the police power, but to the power of eminent domain.

Atchison, etc. Ry. Co. v. Railroad Comm., supra;
Pacific T. & T. Co. v. Eshleman, supra;
Hollywood Chamber of Commerce v. R. R. Comm., supra;
Oregon R. & N. Co. v. Fairchild, supra.

In deciding this question the Court sustains the Commission's contention

> "That each company is ordered to join in the erection of the union station because of its own inadequacy in terminal passenger facilities * * * *"

and holds that

> "The evidence, indeed the admitted facts, show that the station facilities of two of the carriers are inadequate and that the grade crossings of the Southern Pacific, the third carrier, are dangerous to life and limb and unsuited to the surroundings." (R. 197.)

These findings are wholly unsupported by the evidence. These carriers admitted that their respective station *buildings* are inadequate, but other-

wise contended that their passenger station facilities are entirely adequate, both as to size, capacity and track layout. All that remains to be done in order to adequately provide for the accommodation of their passengers is to erect suitable station buildings. There is no evidence in the record to the contrary.

The Court expressly sustains the Commission's findings and order by holding that the grade crossings of the Southern Pacific "could only be changed by a complete and expensive change of trackage or a change of terminal and the Commission adopted the latter method because of the need of a new terminal by the other two carriers * * *", and decides that there was nothing unreasonable or arbitrary in the findings or order of the Commission.

The fact that these two carriers must necessarily expend money in constructing separate and new station buildings on their respective passenger terminal sites does not warrant the Commission in ordering that this money should be expended in constructing a union station at a point not now reached by these Railroads, because the Southern Pacific Company must make an expensive "change of trackage or a change of terminal * * * to eliminate grade crossings on its line". There is no warrant in the statute for such a compulsory order; and if a statute were found upon the books which vested the Commission with power to compel one or more carriers to expend their own money to relieve the necessities of another,

such statute would do violence to the constitutional rights of these two railroads. The Commission's order is therefore void and the State Court erred in not entering a judgment annulling it.

Respectfully submitted,

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(APPENDIX FOLLOWS)